(23,746)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1913.

No. 595.

THE STATE OF ALABAMA, PLAINTIFF IN ERROR,

vs.

SUDIE SCHMIDT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 10, 1913.

1 *Caption, 1911.*

THE STATE OF ALABAMA,
Talladega County:

Be it remembered, That at a regular Term of the City Court of Talladega, begun and held on this the first Monday and Fourth day of September, 1911, present and presiding, the Honorable G. K. Miller, Commissioned Judge of the City Court of Talladega, the following proceedings were had, and judgments rendered, to-wit:

Caption 1912.

THE STATE OF ALABAMA,
Talladega County:

Be it remembered, That at a regular Term of the City Court of Talladega, begun and held on this the First Monday and Second day of September, 1912, present and presiding, the Honorable Cecil Brown, commissioned Judge of the City Court of Talladega, the following proceedings were had, and judgments rendered, to-wit:

Summons.

Summons and Complaint, Talladega County.

City Court of Talladega, Law Side of Docket, September Term 1912.

To any Sheriff of the State of Alabama, Greeting:

You are hereby com-anded to summon Sudie Schmidt to
2 appear before the City Court, of Talladega, in and for said County, at the place of holding the same within thirty days from the service of this summons and complaint then and there to answer, plead or demur to the complaint hereto annexed of the State of Alabama.

You are required to execute this process instanter and to return the same immediately upon the execution thereof.

Witness my hand this 6th day of January, 1912.

M. G. McCARGO,
Clerk of the City Court of Talladega.

Complaint.

THE STATE OF ALABAMA, Plaintiff,
vs.
SUDIE SCHMIDT, Defendant.

In the City Court of Talladega.

The Plaintiff sues to recover possession of the following land, to-wit: The South half of the South-West quarter of Section 16, Town-

ship 17, Range 5 East in Talladega County, Alabama, of which it was in possession and upon which, pending such possession and before the commencement of this suit, the defendant entered and unlawfully witholds, together with One Thousand Dollars for the detention thereof.

ROBERT C. BRICKELL,
Attorney General,
R. B. EVINS,
Special Counsel,
Attorneys for the Plaintiff.

Endorsements.

No. 2172.

STATE OF ALABAMA, Plaintiff,
vs.
SUDIE SCHMIDT, Defendant.

Filed in office January 6th, 1912. M. G. McCargo, Clerk.
ROBERT C. BRICKELL,
Attorney General,
R. B. EVINS,
Special Counsel,
Attorneys for Plaintiff.

Final Record No. 1. Page 91.

3 *Return.*

Received in office, January 6th, 1912, J. C. Cornett, Sheriff. Executed by leaving a copy of this summons and complaint with Sudie Schmidt, on this the 8th day of January, 1912.
J. C. CORNETT, *Sheriff.*

Pleas.

In the City Court of Talladega.

STATE OF ALABAMA, Plaintiff,
vs.
SUDIE SCHMIDT; Defendant.

Comes the defendant in the above entitled cause, and for answer to said complaint, says:
1st. That she is not guilty of the matters alleged therein.
KNOX, ACKER, DIXON AND SIMS,
Attorneys for Defendant.

Filed.

Filed in office January 31st, 1912.
M. G. McCARGO,
Clerk of the City Court of Talladega.

Agreed Statement of Facts.

In the City Court of Talladega, Law Side of Docket.

THE STATE OF ALABAMA, Plaintiff,
VS.
SUDIE SCHMIDT, Defendant.

Be it remembered, That at a regular Term of the City Court of Talladega, in the City of Talladega, in and for the County of Talladega, Alabama, begun and held, on to-wit: the Second day of September, 1912, present and presiding the Honorable Cecil Browne, Judge of the said Court, the following proceedings were had in the above stated cause, on to-wit, the 23rd day of September, 1912.

This cause was submitted to the Court trying said cause
4 without a jury, on the following agreed statement of facts, to-wit: It is agreed that the defendant and those under whom she claims and from whom she has received legal conveyances have been in actual open, notorious and continuous possession of the lands described, to-wit: The S. ½ of the S. W. ¼ of Section 16, Township 17, Range 5, Talladega County, Alabama, under color of title and claim of purchase since, to-wit, the 1st day of January 1870, and that such defendant and those under whom she claims have been in such actual, open, notorious and continuous possession of said property for more than twenty years prior to the adoption of the Code of 1907, such as to amount to legal adverse possession, provided legal adverse possession could be acquired against the State of such property.

It is further agreed that said land is a part of the Sixteenth Section School lands given to the State of Alabama in trust by the United States for school purposes by the act of Congress approved March 2, 1819, admitting said State into the Union. It is further agreed that the title to said property is in the State of Alabama, in trust by virtue of said grant of the United States, provided the defendant has not acquired title by adverse possession, such adverse holding being hereby admitted, if the statutes under which it is claimed are valid statutes. It is further agreed that no claim for damages shall be made. It is further agreed that the Code of 1886 went into effect and became operative on December 25, 1887, and that the Code of 1907 went into effect on the 1st day of May, 1908.

It is further agreed that the defendant withdraws her demand for a trial by jury in this cause, and that the same can be submitted to the Judge on this agreed statement of facts.

STATE OF ALABAMA, *Plaintiff,*
By ROBERT C. BRICKELL,
Its Attorney General.
R. B. EVINS, *Of Counsel.*
KNOX, ACKER, DIXON AND SIMS,
Attorneys for Def't.

Ruling of Court Exceptions.

5 And on the submission of said cause, plaintiff moved the Court to render judgment in its favor for the land sued for, which motion was, by the Court overruled, to which ruling of the Court the plaintiff then and there duly and legally excepted, and thereupon the defendant moved the Court for judgment in favor of the defendant; which motion was by the Court granted, the Court holding that the Statutes of Limitations relied on by the defendant were valid laws and not in conflict with the Constitution of Alabama or the act of Congress of March 2, 1819, or of the Constitution of the United States, to which ruling of the Court in rendering judgment for the defendant and in holding said statutes of limitations to be valid laws, the plaintiff then and there duly and legally excepted.

And now comes the plaintiff on this the 31st day of October, 1912, within ninety days from the entry of said judgment in favor of the defendant in said cause and tenders this as its true and lawful bill of exceptions, that the same may be signed and sealed as such.

Presented to me on this 31st day of October, 1912, signed and sealed as the plaintiff's true and lawful Bill of Exceptions in said cause on this the 31st day of October, 1912.

CECIL BROWNE,
Judge of the City Court of Talladega,
and Presiding on the Trial of said Cause.

Judgment.

No. 2172.

Civil Trial Docket, N. J. No. 4, Page 239.

In the City Court of Talladega, September Term, 1912.

THE STATE OF ALABAMA, Plaintiff,
v.
SUDIE SCHMIDT, Defendant.

On this the 23rd day of September, 1912, came the parties plaintiff and defendant, by their attorneys of record, and this being the day set for hearing and determining this cause, and this cause having been submitted on an agreed state of facts in writing and filed in Court; thereupon the Court, without the intervention of jury, finds the issue in favor of the defendant. It is therefore considered, ordered and adjudged by the Court, that the defendant have
6 and recover of the Plaintiff, judgment for all of the costs of this suit for which let execution issue.

Prayer for Appeal.

In the City Court of Talladega.

STATE OF ALABAMA, Plaintiff,
v.
SUDIE SCHMIDT, Defendant.

Comes the plaintiff in the above entitled cause, and prays an appeal from the judgment of the Court rendered in said cause, to the next term of the Supreme Court of Alabama.

ROBERT C. BRICKELL,
Attorney General.

Filing of Prayer.

Filed in office, December 6th, 1912.

M. G. McCARGO, *Clerk.*

Citation to Defendant.

No. 2172.

City Court of Talladega, September Term, 1912.

Appeal Citation to Supreme Court.

THE STATE OF ALABAMA,
Talladega County:

To Knox, Acker, Dixon & Sims, Attorneys for Defend't:

You will take notice, that on the 23rd day of September, 1912, Judgment was rendered against the Plaintiff, in favor of the defendant, in a cause wherein the State of Alabama was Plaintiff, and Sudie Schmidt was Defendant, in the City Court of Talladega in and for said County, and the Plaintiff from such judgment has obtained and appeal to the Supreme Court of Alabama.

Now, therefore you are cited to appear at the Present
7 Term, 1913, of the Supreme Court of Alabama to defend said appeal if you think proper.

Witness my hand, this 7th day of December, 1912.

M. G. McCARGO, *Clerk.*

Acceptance of Service.

We the undersigned attorneys for the defendant Sudie Schmidt do hereby accept service of the foregoing Citation, and do hereby waive any further or different notice which we may be entitled to.

This December 9th, 1912.

KNOX, ACKER, DIXON & SIMS,
Attorneys for Defendant.

Clerk's Certificate.

In the City Court of Talladega, September Term, 1912.

THE STATE OF ALABAMA,
Talladega County:

THE STATE OF ALABAMA
v.
SUDIE SCHMIDT.

I, M. G. McCargo, Clerk of the City Court of Talladega, in and for Talladega County, Alabama, do hereby certify that the foregoing pages, from one to six, inclusive, contain a full, true and complete transcript of the record and proceedings in a cause therein pending wherein The State of Alabama is Plaintiff and Sudie Schmidt is defendant, and that the Plaintiff did on the 6th day of December, 1912, pray and obtain an appeal to the Supreme Court of Alabama, of which I hereby certify to the Supreme Court.

Witness my hand and Seal this, December, 1912.

M. G. McCARGO,
Clerk of the City Court of Talladega.

8 *Assignment of Errors.*

In the Supreme Court of Alabama.

STATE OF ALABAMA
v.
SUDIE SCHMIDT.

Comes the Appellant in the above stated cause, the State of Alabama, and assigns the following as errors on the record.

1. The Court erred in its judgment rendered in said cause on September 23rd, 1912.

2. The Court erred in finding the issues in said cause in favor of the defendant.

3. The Court erred in rendering judgment in said cause for the defendant.

4. The Court erred in refusing to render judgment in said cause for the Plaintiff.

4½. The Court erred in refusing to find the issues in said cause in favor of plaintiff.

5. The Court erred in overruling plaintiff's motion for a judgment for the lands sued for.

6. The Court erred in granting defendant's motion for judgment in her favor.

7. The Court erred in holding the statutes of Limitations, relied on by defendant, to be valid statutes.

8. The Court erred in holding that the statutes of limitations relied on by defendant were not in conflict with the Federal Constitution.

9. The Court erred in holding that the statutes of limitations relied on by defendant were not in conflict with the Act of Congress, approved March 2, 1819.

10. The Court erred in holding the Statutes of Limitations relied on by defendant were not in conflict with the Constitution of Alabama.

R. C. BRICKELL,
Att'y General,
R. B. EVINS,
Special Counsel,
Attorneys for Appellant.

9 Supreme Court.

TUESDAY, *January 14th*, 1913.

The Court met pursuant to adjournment.
Present:
Hon. J. R. Dowdell, Chief Justice.
Hon. T. C. McClellan, Associate Justice.
Hon. A. D. Sayre, Associate Justice.
Hon. Armond Somerville, Associate Justice.

7 Div., 540.

THE STATE OF ALABAMA
VS.
SUDIE SCHMIDT.

Appeal from Talladega City Court.

Comes the parties by attorneys, and submit this cause on briefs for decision.

10 Supreme Court.

THURSDAY, *February 6th*, 1913.

The Court met pursuant to adjournment.
Present:
Hon. J. R. Dowdell, Chief Justice.
Hon. T. C. McClellan, Associate Justice.
Hon. A. D. Sayre, Associate Justice.
Hon. Ormond Somerville, Associate Justice.

7 Div., 540.

THE STATE OF ALABAMA
VS.
SUDIE SCHMIDT.

Appeal from Talladega City Court.

Comes the parties by attorneys, and the record and matters therein assigned for errors, being submitted on briefs, and duly examined

and understood by the Court, it is considered that in the record and proceedings of the City Court there is no error. It is therefore considered that the judgment of the City Court be in all things affirmed. It is also considered that the Appellant pay the costs of appeal of this Court and of the City Court.

11 Feb. 6-1913.

THE STATE OF ALABAMA,
Judicial Department:

The Supreme Court of Alabama, November Term, 1912-13.

7 Div., 540.

THE STATE OF ALABAMA
v.
SUDIE SCHMIDT.

Appeal from Talladega City Court.

McCLELLAN, *J.*:

Statutory ejecment.

An agreed statement of facts raises, as was intended, the single question, whether adverse possession of Sixteenth Section School Lands, under the Code (1896), sec. 2794, and its predecessors, was operative to invest title in an adverse holder of such lands under color of title. The contention is that such statutes are invalid because inconsistent with Acts of Congress, including that admitting Alabama as a State in 1819, and because in conflict with the constitution of the United States and with the several constitutions of this State in the particulars that Alabama's organic laws touched the subject of the Sixteenth Section School Lands.

12 Since Long v. Brown, 4 Ala., 622, and Cooper v. Roberts, 18 How. (U. S.), 173, contain a full recital of the history of Sixteenth Section School lands,—their legal status and the beneficent motives that inspired the devotion of such lands, or the proceeds of such lands, to purposes of education,—there is no question to repeat, generally, those matters at this time.

In necessary affirmance of the entire validity of the statutes of limitations with respect to Sixteenth Section School Lands in this State, this court ruled, in Miller v. State, 38 Ala., 600, that title might be acquired by an adverse possession for the requisite period to effect that result, premising that the stated application of the doctrine did not conclude any right of the State, for the State had no property in such lands. The pertinent pronouncement of Miller v. State (Supra) has been since approved in Gaston v. State, 88 Ala., 459; Wyatt v. Tisdale, 97 Ala., 594; Prestwood v. Watson, 111 Ala., 604; and T. C. I. & R. R. Co. v. Linn, 123 Ala., 112.

In Wyatt v. Tisdale (supra) the court said, Justice Coleman writing: "The authority of the legislature to make the statute apply

to suits by the State, or for the recovery of sixteenth section lands, is not doubted, and there is no reason why a different construction should be given the statute or a different principle applied when the suit is by the State, or one claiming through the State, than that applied to private persons."

The inspiration of the action taken by the Federal Government, with respect to Sixteenth Section lands, was the terms of the cession of Georgia.

In the proposals submitted for acceptance, as conditions to the admission of Alabama to the Union, was this: "First. That the section numbered sixteen in every township, and when such section has been sold, granted, or disposed of, other lands equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such townships for the use of the schools."

This proposal, as were the others, was accepted by Alabama. But there being no entity representative of the inhabitants of townships capable of taking the legal title to the section, it became then vested in the State for the benefit of those for whom the bounty was intended. The State had no property therein, though upon
13 it rested the high public duty to conserve the application of the subject of the grant to the purpose for which it was bestowed. The trust so established was thus defined in Cooper v. Roberts (supra), Justice Campbell writing:

"The trusts created by these compacts relate to a subject certainly of universal interest, *but of municipal concern, over which the power of the State is plenary and exclusive.*" (Italics supplied.) See Dunklin County v. Dunklin Co. Court, 23 Mo., 449, 456-7; Gaston v. State, 5 Oregon, 48; Supervisors etc. v. Burchell, 31 Ill., 68.

This was the fundamental conception to which may be referred the stated ruling of this court in Miller v. State. The trust thus accepted by the State was of a personal nature, exalted as that was in the plighted public faith,—not a trust fixed upon the land itself by the terms of the grant, and abiding with the land in all events.

Now, the grant in Northern Pacific Railway v. Townsend, 190 U. S., 267, was radically different from that of the Sixteenth Section Lands. There, the donation was for the particular public purpose of constructing a railroad through the public domain. The nature of the grant itself forbade such disposition of the area granted as would defeat its permanent application to the public purpose entertained and expressed in its donation. The opinion takes special, controlling account of this fact. In there determining the nature and character of the estate taken under such a grant, it was, of course, held that an estate in the likeness of "a limited fee," only, passed,—an implied condition of reverter being raised up to effect the reversion to the government if the land ceased to be used or retained for the purpose designated. In respect of the school lands their disposal was anticipated. The grant, in the proposal submitted to and accepted by the State, was of the fee, without limitation upon the power of the State.—Cooper v. Roberts, supra. And the Act of Congress purporting to allow the sale of such lands was

unnecessary and vain other than as evidencing the good faith of the State in the premises.—Cooper v. Long, supra; Long v. Brown, 4 Ala., 622, 629.

The views prevailing in Board of Trustees of Vincennes University v. Indiana, 14 Howard, 172, are not opposed to the conclusions prevailing in the later decision of that court in Cooper and Roberts, supra. The sum of the holding there was that the
14 corporation created by Indiana took, upon its creation, the theretofore abeyed title to the subject of that grant (for a seminary of learning), and that Indiana was without power to divest the title so invested.

We see nothing in the terms of the grant of the Sixteenth Section Lands, or in any binding Act of Congress to which we have been referred, that presented or presents an obstacle to the valid application of the statute of limitations and of the doctrine of adverse possession to such lands.

This State has, from the beginning, faithfully performed its obligations with respect to these lands and the great purpose inspiring their grant. See its several constitutions, and Aiken's Dig., p. 373, sec. 19; Clay's Dig., p. 519 et seq.; and codifications of 1852 and subsequently.

The constitution of 1819 and its several successors have pledged the faith of the State in the premises. But with all, there is no provision of those organic laws of Alabama wherefrom it could be concluded that Sixteenth Section Lands should be exempt from the application and effect of laws of limitation applicable to all other lands save those devoted to a public, governmental purpose or beneficially owned by the State. The particular injunction, expressed by the constitutions of this State, that such lands should be preserved from "waste or damage" and the funds derived therefrom faithfully applied to the object of the grant, certainly intended no restriction upon the power of the State, which in this "municipal concern" is "plenary and exclusive."

The conclusion is that the statutes assailed were valid.

The result is that the judgment must be affirmed.

Affirmed.

All the Justices concur, except deGraffenried, J., not sitting.

15 THE STATE OF ALABAMA,
Judicial Department:

Supreme Court of Alabama.

7 Div., No. 540.

THE STATE OF ALABAMA, Appellant,
v.
SUDIE SCHMIDT, Appellee.

From Talladega City Court.

THE STATE OF ALABAMA,
City and County of Montgomery:

I, Robert F. Ligon, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages numbered from one to fourteen inclusive, contain a full, true, and correct copy of the record and proceedings of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, Robert F. Ligon, Clerk of the Supreme Court of Alabama, this the 4th day of June 1913.

[Seal of the Supreme Court of Alabama.]

ROBERT F. LIGON,
Clerk of the Supreme Court of Alabama.

16 UNITED STATES OF AMERICA, ss.:

The President of the United States to the honorable the Justices of the Supreme Court of the State of Alabama, Greeting:

Because in the record and proceeding, as also in the rendition of a judgment of a plea which is in the said Supreme Court of the State of Alabama, before you, at the February sitting of the November term, 1912, thereof, being the highest court of law or equity of the said state, in which a decision could be had in the said suit between the State of Alabama, plaintiff and appellant, and Sudie Schmidt, defendant and appellee, wherein was drawn in question the validity of a statute of said state on the ground of its being repugnant to the constitution, or laws of the United States, and the decision was in favor of its validity, or wherein was drawn in question the validity of, or wherein was drawn in question the construction of a clause of the Constitution, or of a statute of the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said Constitution or statute, a manifest error hath happened to the great damage of the said State of Alabama, as by its complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment herein be given, that then under your seal, distinctly and openly you send the records

and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct the error, what of right, and according to the laws and customs of the United States should be done.

Witness, the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this the 21st day of May, in the year of our Lord, One Thousand Nine Hundred and Thirteen.

Done in the city and county of Montgomery, with the seal of the Circuit Court of the United States for the Middle District of Alabama attached.

[Seal of the United States District Court, Middle District of Alabama.]

HARVEY E. JONES,
Clerk of the Circuit Court of the U. S. for the Middle District of Alabama.

Allowed by
J. R. DOWDELL,
Chief Justice of the Supreme Court of Alabama.

17 *Original.*

UNITED STATES OF AMERICA, ss.:

The President of the United States to Sudie Schmidt, Alabama, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Alabama, wherein the State of Alabama is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done, the parties in that behalf.

Witness the Chief Justice of the Supreme Court of the State of Alabama, this the 21st day of May, 1913.

J. R. DOWDELL,
Chief Justice of the Supreme Court of the State of Alabama.

Attest:
ROBERT F. LIGON,
Clerk of the Supreme Court of the State of Alabama.

18 Executed by serving a copy of the within notice upon Sudie Schmidt.

J. C. CORWELL,
Sheriff of Talladega County, Alabama.

In the Supreme Court of the United States.

STATE OF ALABAMA,
v.
SUDIE SCHMIDT.

Comes now the State of Alabama, the plaintiff in error in the above entitled cause, and avers and shows that in the record and proceedings in said cause, the Supreme Court of Alabama erred to the grievous injury and wrong of the plaintiff herein, and to the prejudice, and against the rights of the plaintiff in error in the following particulars, to-wit:

1st. The said Supreme Court erred in holding that under the agreed statement of facts, in this case, title was acquired by the defendant under the statutes of Alabama to the land sued for, by adverse possession.

2nd. The said Supreme Court erred in holding that under the statutes and laws of the United States, the sixteenth section lands, granted for the use of the schools were affected by the statutes of limitations of the State of Alabama, so as to vest title to them in an individual by adverse possession.

3rd. The said Supreme Court erred in holding that the statutes of limitations of Alabama, upon which defendant's claim of title by adverse possession to the lands sued for, was rested, were not in conflict with the statutes of the United States, and void.

4th. The said Supreme Court erred in holding that the statutes of limitation of the State of Alabama affecting sixteenth section lands, were not in conflict with the Constitution of the United States and void, as impairing the obligation of the contract between the United States and the State of Alabama, wherein the United States granted and the State of Alabama accepted, for the use of schools, the sixteenth section lands.

5th. The said Supreme Court erred in holding that the land sued for, and granted by the Act of Congress to the inhabitants
20 of Township 17, Range 5, Talladega County, Alabama, for the use of schools, was legally diverted from the use for which granted, and the title thereto vested in the defendant, through the operation of the statutes of limitation of the State of Alabama, upon the defendant's occupance thereof.

6th. The said Supreme Court erred in holding that the statutes of limitation of the State of Alabama, upon which defendant's claim of title was rested, were not in conflict with the Constitution of the United States, and void.

7th. The said Supreme Court erred in holding, under the agreed statement of facts in this case, that the trial court properly rendered judgment for the defendant, and in affirming said judgement.

8th. The said Supreme Court erred in not holding that under the agreed statement of facts in this case, that the trial court erred in rendering judgment in said case for the defendant.

9th. The said Supreme Court erred in not reversing the judgment for the defendant, rendered by the trial court in this cause.

10th. The said Supreme Court erred in not holding that the statutes of limitations of the State of Alabama, under which it was provided, that title to sixteenth section lands granted for the use of schools by the United States could be acquired by adverse possession, to be void as in conflict with the statutes and laws of the United States.

Wherefore, for these and other manifest errors appearing in the record, the said State of Alabama, plaintiff in error, prays that the judgment of the said Supreme Court of Alabama be reversed and set aside, and held for naught, and that judgment be rendered for plaintiff in error, granting it its rights under the statutes and laws of the United States, and plaintiff also prays judgment for its costs.

R. B. EVINS,
Greensboro, Ala.
Attorney for the State of Alabama.

Filed Supreme Court of Ala., May 22, 1913. Rob't F. Ligon, Clerk.

21 In the Supreme Court of Alabama.

STATE OF ALABAMA,
v.
SUDIE SCHMIDT.

Comes the State of Alabama, the appellant in the above stated cause, by its attorney of record, R. B. Evins, and says: That on the 6th day of February, 1913, a final judgment was entered in this cause by this court against the appellant, the said State of Alabama; that said State of Alabama was and is aggreived in that, in said judgment, and proceedings had prior thereto in this cause, errors were committed to its prejudice; that this is an action of ejectment brought under the laws of the State of Alabama to recover the South half of the Southwest quarter of Section Sixteen, Township Seventeen, Range Five, East, in Talladega County, the same being a part of the sixteenth section in said township and range in said County, granted to the inhabitants of said township for the use of the schools, by the Act of Congress approved March 2, 1819, and entitled, "An Act to enable the people of Alabama territory to form a constitution and state government, and for the admission of such state into the union on an equal footing with the original states," through the operation of which the said appellant claims title to said lands for the use of schools in said township; that by this action there was drawn into question the construction of said act of Congress, and of the title conveyed thereby, and of certain provisions of the Constitution of the United States, and the decision of this court is against the said title and right claimed therein under said Act of Congress by the State of Alabama, and is contrary to said act of Congress and the Constitution of the United States, and against the right and title of the said State of Alabama, thereunder, all
22 of which will more fully appear in detail from the Assignments of error filed herein.

Wherefore, the said State of Alabama prays that a writ of error may issue to the Supreme Court of Alabama for the correcting of the errors complained of, and that a duly authenticated transcript of the record, procedings and papers herein may be sent to the Supreme Court of the United States.

R. B. EVINS,
Attorney for the State of Alabama.

Filed Supreme Court of Ala., May 22, 1913. Rob't F. Ligon, Clerk.

23 In the Supreme Court of the United States.

THE STATE OF ALABAMA
v.
SUDIE SCHMIDT.

Comes now the State of Alabama, the appellant above named, on this the 21 day of May, A. D., 1913, and files and presents to this Court, his petition, praying for the allowance of a writ of error intended to be urged by it; and praying further that a duly authenticated transcript of the records, proceedings and papers upon which the judgment herein was rendered, may be sent to the Supreme Coury of the United States; and that such other and further proceedings may be had in the premises as may be just and proper; and upon consideration of the said petition, the Court desiring to give this petitioner an opportunity to test in the Supreme Court of the United States, the questions therein presented, it is ordered by this court that a writ of error be allowed as prayed, provided, however, that said State of Alabama give bond according to law, in the sum of two hundred and fifty dollars.

In testimony whereof, witness my hand, this the 21 day of May, 1913.

J. R. DOWDELL,
Chief Justice of the Supreme Court of Alabama.

Filed Supreme Court of Ala., May 22, 1913. Rob't F. Ligon, Clerk.

24 In the Supreme Court of the United States.

STATE OF ALABAMA,
v.
SUDIE SCHMIDT.

Know all men by these presents, That we, the State of Alabama, acting by and through the Governor of Alabama, Emmet O'Neal, as principal and R. B. Evins of Hale County, and Emmet O'Neal of Montgomery County, State of Alabama, as sureties, are held and firmly bound unto the above named Sudie Schmidt in the sum of Two hundred and fifty dollars, to be paid to her and for the pay-

ment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally firmly by these presents.

Sealed with our seals and dated this the 21st day of May, in the year of our Lord, One Thousand Nine Hundred and Thirteen.

Whereas, the above named State of Alabama, plaintiff in error, seeks to prosecute its writ of error, in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Alabama.

Now, therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute its writ of error to effect, and answer all costs that may be adjudged, if it shall fail to make good its plea, then this obligation to be void, otherwise to remain in full force and virtue.

THE STATE OF ALABAMA, [SEAL.]
By EMMET O'NEAL, *Governor.*
R. B. EVINS. [SEAL.]
EMMET O'NEAL. [SEAL.]

Filed Supreme Court of Ala., May 22, 1913. Rob't F. Ligon, Clerk.

25 STATE OF ALABAMA,
Montgomery County, ss.:

R. B. Evins and Emmet O'Neal whose names are subscribed as surety to the above bond, being severally and duly sworn, each for himself says, that he is a resident and free holder of the State of Alabama, and is worth more than the sum in said bond specified as the penalty thereof, over and above all his just debts and liabilities, in property not by law exempt from execution in this state.

R. B. EVINS.
EMMET O'NEAL.

Subscribed and sworn to before me, this 21 day of May, A. D., 1913.

My commission expires, April 5th, 1915.

JOHN MOFFAT,
Notary Public.

This bond approved this the 21st day of May, 1913.

J. R. DOWDELL,
Chief Justice of the Supreme Court of Alabama.

Filed Supreme Court of Ala., May 22, 1913. Rob't F. Ligon, Clerk.

26

In the Supreme Court of Alabama.

THE STATE OF ALABAMA, Appellant,
vs.
SUDIE SCHMIDT, Appellee.

I, Robert F. Ligon, Clerk of the Supreme Court of the State of Alabama, by virtue of the within writ of error, and in obedience thereto, do hereby certify that the foregoing pages numbered from one to twenty-three, both inclusive, contain a true, full and complete transcript of the record and proceedings had in said Court, together with a true and correct copy of the opinion of said court, in the case of The State of Alabama, Appellant vs. Sudie Schmidt, Appellee (7 Division No. 540), and the original writ of error, the original citation and proof of service, the original assignments of error, and copies of the petition for the writ of error, the order allowing the writ, and the writ of error bond, as the same appears upon the files and records of this office.

In Testimony Whereof, I have hereunto affixed my official signature, as Clerk of the Supreme Court of Alabama, and have caused the seal of said Supreme Court to be hereunto affixed at the Capital, in the City of Montgomery, Alabama, on the 4th day of June, 1913, A. D.

[Seal of the Supreme Court of Alabama.]

ROBERT F. LIGON,
Clerk of the Supreme Court of Alabama.

Endorsed on cover: File No. 23,746. Alabama Supreme Court. Term No. 595. The State of Alabama, Plaintiff in Error, vs. Sudie Schmidt. Filed June 11th, 1913. File No. 23,746.

5

No. 595.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1913.

STATE OF ALABAMA,
Plaintiff in Error,

vs.

SUDIE SCHMIDT,
Defendant in Error.

MOTION OF PLAINTIFF IN ERROR TO ADVANCE CAUSE.

The Brown Printing Company, Montgomery, Ala.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1913.

STATE OF ALABAMA,
Plaintiff in Error,

vs.

SUDIE SCHMIDT,
Defendant in Error.

MOTION OF PLAINTIFF IN ERROR TO ADVANCE CAUSE.

Now comes the Plaintiff in error, the State of Alabama, and moves the court to advance this cause on the docket of this court, and to set a day for the argument and submission thereof, in preference to civil causes on said docket pending between private parties, and for grounds of said motion show and represent unto the court:

1. That this cause is brought into this court by a writ of error directed to the Supreme Court of the State of Alabama, wherein the Supreme Court of Alabama decided against a right claimed by said plaintiff in error, under the Constitution and laws of the United States, and is a cause wherein Plaintiff in error sought to recover from the defendant in error certain sixteenth section lands, a part of the land granted by the United States to the inhabitants of the several townships for the use of schools, and claimed by the defendant in error by adverse possession.

2. That a large quantity of the lands so granted by the United States to the inhabitants of the several townships in Alabama, to-wit, two hundred and fifty thousand acres, of a rental value of, to-wit, two hundred and fifty thousand dollars annually are held by many and divers persons, to-wit, one thousand different individuals or corporations, claiming separately portions of said lands by a similar claim of adverse possession.

3. That said lands are diverted from the purposes for which granted during the pendency of this cause, if illegally held; and the use and disposition thereof affected by this suit during the pendency if illegally held.

4. That it is the contention of the plaintiff in error that the statute of Alabama upon which said claim of adverse possession is founded is in conflict with the Constitution and Laws of the United States, and void, and that claims of adverse possession are without foundation.

5. That said cause was tried and decided in the trial court and in the Supreme Court of Alabama, upon an agreed statement of facts, and presents no question of fact for determination, but a question of law alone.

Wherefore, the premises considered, plaintiff in error prays that this cause may be advanced upon the docket of this court and a day set for the argument and submission thereof, in preference to any other civil cause pending on said docket between private parties, of which due notice be given all parties.

Robert C. Brickell,
Attorney General.

R. B. Evins
Attorneys for Plaintiff in Error.

ARGUMENT.

The motion to advance this cause is based upon Section 949 of the Revised Statutes of the United States, providing that when the State is a party it shall be entitled, on showing sufficient cause, to have the cause heard at any day after it is docketed, in preference to any civil cause pending in such court between private parties.

The right to the advancement of this cause depends, therefore, upon whether sufficient cause is shown.

This cause tests the right of the State to recover, for the uses for which granted, about a quarter of a million acres of land granted by the United States, by the act admitting Alabama to the Union to the inhabitants of the several townships of the State for the use of schools. Whatever may be the ultimate decision of this cause it is equally important to the State and the holders of these lands that the question be decided as early as possible.

If the State's suit is well founded, the revenue from these lands should not be withheld from the uses to which the lands were dedicated, nor be in part lost if judgments for damages be rendered against insolvent parties. If the State's suit is not well founded, then the thousand or more holders of these lands should be relieved of the cloud which this suit casts upon their title.

All of which is respectfully submitted,

Robert C. Brickell

Attorney General.

R. R. Evans

Attorneys for Plaintiff in Error.

To Sudie Schmidt, or Messrs. Knox, Acker, Dixon & Semmes, her attorneys of record:

You will take notice that Plaintiff in error in this cause will make a motion in the Supreme Court of the United States on the 10th day of November, 1913, to advance this cause on the docket of said court, and to set a date for the argument and submission thereof, at which time you can be present if you so desire.

Robert C. Brickell
Attorney General.

R. B. Evins
Attorneys for Plaintiff in Error.

I, Robert C. Brickell, Attorney General, of the State of Alabama, and one of the attorneys for Plaintiff in Error in the above entitled cause, hereby certify that I have this day mailed, postage prepaid, a copy of the foregoing motion and argument to Messrs. Knox, Acker, Dixon & Semmes, Talladega, Alabama, Attorneys for Defendant in Error. Oct. 31, 1913

Robert C. Brickell
Attorney General.
Attorney for Plaintiff in Error.

INDEX TO BRIEF

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1913.

THE STATE OF ALABAMA, *Plaintiff in Error,*

vs.

SUDIE SCHMIDT, *Defendant in Error.*

BRIEF AND ARGUMENT OF COUNSEL FOR THE PLAINTIFF IN ERROR.

STATEMENT OF THE FACTS.

This is a statutory action of ejectment, brought by the State of Alabama, the plaintiff in error against Sudie Schmidt, the defendant in error, to recover the south half of the southwest quarter of section sixteen, township seventeen, range five, Talladega County, Alabama.

The case was tried without a jury on the following agreed statement of facts:

"STATEMENT OF FACTS BETWEEN PARTIES.

State of Alabama, Plaintiff,
v.
Miss Sudie Schmidt, Defendant.

In the City Court of Talladega.
Law side of the Docket.

The following facts are agreed to between the plaintiff and the defendant.

It is agreed that the defendant and those under whom she claims, and from whom she has received legal conveyance have been in actual, open, notorious and continuous possession of the lands described, to-wit: the south half of the southwest quarter of section 16, township 17, range 5, Talladega County, Alabama, under color of title and under claim of purchase since, to-wit, the 1st day of January, 1870, and that such defendant and those under whom she claims have been in such actual, open, notorious and continuous possession of said property for more than twenty years prior to the adoption of the Code of 1907, such as to amount to legal adverse possession, provided legal adverse possession could be acquired against the State of such property.

It is further agreed that said land is part of the sixteenth section school lands given to the State of Alabama, in trust by the United States for school purposes by the Act of Congress, approved March 2, 1819, admitting said state into the Union. It is further agreed that the title to said property is in the State of Alabama in trust, by virtue of said grant of the United States, provided the defendant has not acquired title by adverse possession, such adverse holding being hereby admitted, if the statutes under which it is claimed are valid statutes. It is further agreed that no claim for damages shall be made. It is further agreed that the Code of 1886 went into effect and became operative on December 25th, 1887, and that the Code of 1907 went into effect and became operative on the 1st day of May, 1908. It is further agreed that the defendant withdraws her demand for a trial by jury in this cause, and that the same can be submitted to the Judge on this agreed statement of facts.

STATE OF ALABAMA, *Plaintiff*,
By R. C. BRICKELL, *Its Att'y. General*,
R. B. EVINS, *of Counsel*,
KNOX, ACKER & DIXON,
Attorneys for Defendant.

The State of Alabama claimed the right to recover the land in suit upon the fact that said land was a part of the lands granted by the Government of the United States to the inhabitants of the several townships within the State for the use of schools, by the Act of Congress, approved March 2, 1819, entitled,

"AN ACT

To enable the people of the Alabama Territory to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states."

(3 U. S. Stats. at Large, 489.)

as amended by the Act of Congress, passed in response to a petition by the State of Alabama, approved March 2, 1827, entitled,

"AN ACT

To authorize the Legislature of the State of Alabama to sell the lands heretofore appropriated for the use of schools in that state."

(4 U. S. Stats. at Large, 237.)

The defendant claimed title to the lands sued for under the provisions of the Alabama statutes, as they appeared in the Code of 1886 (section 2613) and in the Code of 1896 (section 2794), which are, so far as pertinent, as follows:

"WITHIN TWENTY YEARS,—

1. Actions at the suit of the State against a citizen thereof, for the recovery of real or personal property.

2. Actions by or for the use of any township, for the recovery of sixteenth section or other school lands belonging to the township."

In the next succeeding Code of Alabama, that one which is now operative, and known as the Code of 1907, the language above quoted from the Codes of 1886 and 1896 does not appear, and in lieu of it is the following:

"4833. There is no limitation of the time within which the state may bring actions for the recovery of any of the land mentioned in section 3859 of this Code."

Section 3859, thus referred to, is in the following language:

"All actions for the recovery of land, or the possession thereof, belonging to the state, and sixteenth section lands, school indemnity land and all other school lands, and lands of the University of Alabama, the Polytechnic Institute, the Alabama Industrial School for Girls, the Alabama Industrial School, the Alabama School for the Deaf, the Alabama School for the Blind, the Alabama Schools for Deaf and Blind Negroes, any State Normal School, or the Alabama Insane Hospitals, and of any public educational or governmental institution of this state, shall be brought by and in the name of the State of Alabama, or in the name of the State of Alabama for the use of the schools, or other educational or governmental institution to which, or for the use of which the lands sued for were donated, granted, or purchased or held."

The statutes limiting the time within which actions might be brought to recover sixteenth section lands, grant-

ed to the inhabitants of the several townships, and upon which the defendant based her claim of adverse possession, were claimed by the plaintiff, the State of Alabama, to be in conflict with the Act of Congress of March 2, 1819 (3 U. S. Stats. at Large, 489) and the Act of Congress approved March 2, 1827 (4 U. S. Stats. at Large, 237), and to be ineffective to divert the lands granted from the purposes to which they were devoted by the grant; and also to be in conflict with section 10 of Article 1 of the Federal Constitution, providing "No state shall pass any law impairing the obligation of contracts;" in that the proposals of the United States in the Act of March 2, 1819 to grant sixteenth sections to the inhabitants of the several townships for the use of schools, and the acceptance of those proposals by the people of the Alabama Territory, constituted a contract between the United States and the State of Alabama, the obligation of which was impaired by these statutes of Alabama under the operation of which these lands became diverted from the uses for which granted, and that thereby these statutes were invalid.

The case was submitted on the agreed statement of facts to the Court, without a jury, and judgment was rendered in favor of the defendant. The cause was appealed by the State of Alabama to the Supreme Court of Alabama, and the validity of the Alabama statutes of limitation, above referred to, were attacked on the grounds above stated.

The Supreme Court of Alabama affirmed the judgment of the lower court, holding that the statutes upon which the defendant rested her claim of adverse possession, were not in conflict with the Constitution of the United States and not in conflict with any of the Acts of Congress. To review that decision, a writ of error was sued out and the cause brought to this Court. The questions here presented are:

Are the statutes of Alabama limiting the time within which actions may be brought to recover sixteenth section lands, invalid as being in conflict with the Constitution and statutes of the United States; and is a claim of adverse possession founded on these statutes of limitations a good defense to an action to recover these lands?

ASSIGNMENT OF ERRORS.

The following assignment of error is made as to the judgment of the Supreme Court of Alabama:

1st.—The Supreme Court erred in holding that under the agreed statement of facts, in this case, title was acquired by the defendant under the statutes of Alabama to the land sued for, by adverse possession.

2nd.—The said Supreme Court erred in holding that under the statutes and laws of the United States, the sixteenth section lands, granted for the use of the schools were affected by the statutes of limitations of the State of Alabama, so as to vest title in an individual by adverse possession.

3rd.—The said Supreme Court erred in holding that the statutes of limitations of Alabama, upon which defendant's claim of title by adverse possession to the lands sued for, was rested, were not in conflict with the statutes of the United States, and void.

4th.—The said Supreme Court erred in holding that the statutes of limitations of the State of Alabama were not in conflict with the Constitution of the United States and void, as impairing the obligaion of the contract between the United States and the State of Alabama, wherein the United States was granted and the State of Ala-

bama accepted, for the use of schools, the sixteenth section lands.

5th.—The said Supreme Court erred in holding that the lands sued for, and granted by the Act of Congress to the inhabitants of township seventeen, range five, Talladega County, Alabama, for the use of schools, was legally diverted from the use for which granted, and the title thereto vested in the defendant, through the operation of the statutes of limitations of the State of Alabama, upon the defendant's occupance thereof.

6th.—The said Supreme Court erred in holding that the statutes of limitations of the State of Alabama, upon which defendant's claim of title was rested, were not in conflict with the Constitution of the United States, and void.

7th.—That the said Supreme Court erred in holding, under the agreed statement of facts in this case, that the trial court properly rendered judgment for the defendant, and in affirming said judgment.

8th.—The Supreme Court erred in not holding that under the agreed statement of facts in this case, that the trial court erred in rendering judgment in said case for the defendant.

9th.—The said Supreme Court erred in not reversing the judgment for the defendant, rendered by the trial court in this cause.

10th.—The said Supreme Court erred in not holding that the statutes of limitations of the State of Alabama, under which title to sixteenth section lands granted for the use of schools by the United States may be acquired by adverse possession, to be void as in conflict with the statutes and laws of the United States.

LEGAL PROPOSITIONS.

I.

The sixteenth section lands in this state were granted by Congress to the inhabitants of the several townships for a specific use, viz.: the use of schools.

3 U. S. Sats. at Large, 489, approved March 2, 1819;
4 U. S. Sats. at Large, 237, approved March 2, 1827.

II.

This grant which was in the form of a proposal to the people of the Alabama Territory, the acceptance of which was a prerequisite for the admission of the state into the Union, was accepted, as made, by the inhabitants of the state, in convention assembled, on August 2nd, 1819.

Ordinance of Constitutional Convention of Alabama of 1819;
Code of Alabama for 1907, Vol. 1, page 82-83.

Upon the acceptance of these proposals, the State was admitted into the Union.

3 U. S. Sats. at Large, 608.

III.

By the grant of these lands for the particular use, the United States retained title for all other purposes or uses.

Northern Pac. Ry. Co. v. Townsend, 23 Sup. Ct. Rep. 671.

IV.

The State of Alabama, in accepting the proposals upon which its admission into the Union was made contingent, disclaimed all right, and title to waste or *unappropriated* lands lying within said territory.

Clause in Fourth proposal in Act of Congress of March 2nd, 1819, U. S. Stats. at Large, 489;
Ordinance of Constitutional Convention of Alabama of 1819;
Code of Alabama, Vol. I, p. 82-83.

All other uses or purposes to which said sixteenth section lands might be put, except the use for schools, being *unappropriated* by the United States, came within the above disclaimer.

Nor. Pac. Ry. Co. v. Townsend, supra.

V.

A state statute of limitations, whereby lands granted by the United States to a specific use, are diverted from that use into privtae ownership, are in conflict with the act of Congress making the grant, and void.

Nor. Pac. Ry. Co. v. Townsend, 23 Sup. Ct. Rep. 671.

VI.

The State has no power to divert sixteenth section lands from the specific use, for schools, to which they were dedciated by the Act of Congress.

Nor. Pac. Ry. Co. v. Townsend, 23 Sup Ct. Rep. 671;

Trustees of Vincennes University v. State of Indiana, 14 How. 269;
Springfield Township v. Quick, 6 Indiana 83;
Same case on appeal, 22 Howard 56;
Davis v. Indiana, 94 U. S. 792;
Morton v. Granada M. & E. Academies, 16 Miss. 773.

VII.

The acceptance of the proposals of the Act of Congress of March 2nd, 1819, created a contract between the United States and the State of Alabama, and the attempted diversion of these lands from the use to which granted, by a state statute of limitations, violates the obligation of this contract, and is void.

Fletcher v. Peck, 6 Cranch, 87;
Fenn v. Kinsey, 45 Mich. 446, 8 N. W. Rep. 64;
Covington v. Commonwealth, 14 Sup. Ct. Rep. 1089;
U. S. v. Great Falls, 21 Md. 119;
Lowery v. Francis, 2 Yerg. (Tenn.) 534.

The Acts of Congress making the grant are construed most strongly against the grantee, and in favor of the United States.

U. S. v. Michigan, 190 U. S. 379.

VIII.

The Act of Congress, approved March 2, 1819, and March 2nd, 1827, 3 U. S. Stats. at Large, 608 and 4 U. S. Stats. at Large 237, are in pari materia, and must be construed, as if passed at the same time.

Plummer v. Murray, 51 Barbour (N. Y.) 201;
People v. Aichison, 7 How. Pr. 241.

The grant of sixteenth sections for the use of schools, is a part of the land system of the United States.

2 Kent Com. (13 Ed.) 196 note e.

It originated in the Act of Congress of 1875, providing, "that there shall be reserved lot No. 16, of every township for the maintenance of public schools within the township;" and was reiterated in section 3 of the Ordinance establishing the North West Territory, in the words:

> "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall be forever encouraged."

BRIEF AND ARGUMENT.

In accordance with its settled policy, coeval with the government, the United States has, as a part of its land system, made provision for the maintenance of the public schools in each State, by a grant of lands for the use of schools.

26 A. & E. Ency. of Law (2 Ed.) 354 (XV).

This was in recognition of the fact, as the inspired provision of the founders of the Nation gave it utterance in the Ordinance of 1787, establishing the Northwest Territory, that,

> "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall be forever encouraged."

In a government of and by the people it was, and always will be, of the last importance to every part of the common country that the citizenship of every other part of it should enjoy that development of mental and moral qualities which would most adequately prepare them for the high duties of citizenship, and which could best be reached through the means of education.

It became, therefore, logically and wisely, a matter of the deepest moment to the general government that in each state, the means of education should be, to some extent, at least, provided by the general government, and in the grant of sixteenth sections to the use of schools this provision was made.

It is, therefore, a matter of concern, not only to the people of Alabama, but to all the people of the United States,

that this donation for the purposes of education be preserved in its original integrity, and to the end that it might be thus preserved and could not be dissipated and wasted, the statutes making the grants were aptly framed.

In carrying out this general governmental policy, coeval and coextensive with the United States, and extending it to the people of Alabama, on its admission into the Union, the Act of Congress made certain proposals to the people of the Alabama territory, the first of which was:

> "That the section numbered sixteen in every township, and when such section has been sold, granted or disposed of, other lands equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such townships for the use of schools."

The fourth proposal contained in this Act, coupled with the proposals, the following proviso:

> "And provided, always, that the said convention shall provide, by an ordinance irrevocable without the consent of the United States, that the people inhabiting the said territory, do agree and declare that they forever disclaim all right and title to the waste or unappropriated lands lying within the said territory; and that the same shall be and remain at the sole and entire disposition of the United States."

3 U. S. Stats. at Large, 489.

In response to the proposals, the people of Alabama, in Constitutional Convention assembled, adopted an Ordinance, as follows:

> "This Convention, for and in behalf of the people inhabiting this state, do accept the proposition of

fered by the Act of Congress under which they are assembled; and this convention for and in behalf of the people inhabiting this state, do ordain, agree and declare, that they forever disclaim all right and title to the waste or unappropriated lands lying within this state."

Code of Alabama 1907, Vol. I, page 82.

Within eight years after the passage of the Act of Congress, approved March 2nd, 1819, the legislature of Alabama petitioned the Congress for the right to sell the sixteenth section lands, granted for the use of schools (*Long v. Brown*, 4 Ala. 622), and in response to that petition Congress passed the following Act, approved March 2nd, 1827:

"Sec. 1. That the legislature of Alabama shall be, and is hereby authorized to sell and convey in fee simple all or any part of the lands heretofore reserved and appropriated by Congress for the use of schools within said state, and to invest the money arising from a sale thereof in some productive fund, the proceeds of which shall be forever applied, under the direction of said legislature, for the use and support of the schools within the several townships and districts or county for which they were originally reserved and set apart and for no other purpose whatsoever; provided said land, or any part thereof, shall in no case be sold without the consent of the inhabitants of such townships or districts to be obtained in such manner as the legislature shall by law direct, and provided, also, that in the apportionment of the proceeds of said funds each township and district aforesaid shall be entitled to such part thereof and no more as shall have accrued from the sum or sums

of money arising from the sale of school lands belonging to such township or district.

"Sec. 2. And be it further enacted, That if the proceeds arising to the township or district from said fund shall be insufficient for the support of schools therein, it shall be lawful for said legislature to invest the same as hereinbefore directed until the whole proceeds of the funds belonging to such township or district shall be adequate to the permanent maintenance and support of schools within the same."

4 U. S. Stats. at Large, 287.

If it is to be determined from the language of the original grant alone, it appears clearly that by it no power to alienate the lands granted was either expressly or impliedly given. The lands, not the proceeds of a sale of the lands, were dedicated to the use of schools. It was evidently in the contemplation of the Congress that in each township, schools would be a continuing necessity, and it was the evident intention of that body that that necessity should be supplied from the rents, incomes and profits of the lands—the most stable and permanent form of investment.

That no such power of disposition was intended, and that the grant was construed both by the people of Alabama and the Congress not to include any such power, is evident from the fact that within the short period of eight years, the legislature of Alabama petitioned the Congress for leave to sell these lands, i. e., asked for a right not then existing, and that the Congress granted that permission, coupling with it a provision that in no case should any such sale be made unless the consent of the inhabitants of the township in which the lands proposed to be sold were located was first obtained; and the further provision, that,

in the event of such sale the funds arising therefrom should be invested in some productive fund the proceeds of which should be applied to the same use to which the land was dedicated and to no other use whatsoever.

Certainly the legislature of Alabama did not ask leave to exercise a right which it already possessed, and certainly the Congress did not grant a privilege which it had already conferred.

If there was any doubt that the power of disposition did not exist, this contemporaneous construction of the grant by the parties to it, would resolve the doubt against the existence of the right.

U. S. v. Michigan, 190 U. S. 379;
Five per cent cases, 110 U. S. 471.

Especially in view of the principle that the grant is to be construed in favor of the United States and most strongly against the grantee.

U. S. v. Michigan, 190 U. S. 379.

We respectfully submit, however, that in resolving this question the two Acts of Congress, that approved March 2nd, 1819, and that approved March 2nd, 1827, being in pari materia, as they are, should be read together and construed as if passed at the same time.

Plummer v. Murray, 51 Barb. (N. Y. 201;
People v. Aichison, 7 How. Pr. 241.

The two Acts thus read together would constitute the law on the subject as follows:

"That the section numbered sixteen in every township, and when such section has been sold, granted, or

disposed of, other lands equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such townships for the use of schools. That the legislature of the State of Alabama shall be, and is hereby authorised to sell and convey in fee simple all or any part of the lands heretofore reserved and appropriated by Congress for the use of schools within said state and to invest the money arising from the said sale thereof in some productive fund, the proceeds of which shall be forever applied, under the direction of said legislature, for the use and support of schools within the several townships and districts of county for which they were originally reserved and set apart and for no other purpose whatsoever; provided said land, or any part thereof, shall in no case be sold without the consent of the inhabitants of such townships or districts to be obtained in such manner as the legislature shall by law direct and, provided also, that in the apportionment of the proceeds of said fund, each township and district aforesaid shall be entitled to such part thereof and no more as shall have accrued from the sum or sums of money arising from the sale of school lands belonging to such township or district. And be it further enacted that if the proceeds arising to the township or district from said fund shall be insufficient for the support of schools therein, it shall be lawful for said legislature to invest the same as hereinbefore directed until the whole proceeds of the fund belonging to such township or district shall be adequate to the permanent maintenance and support of schools within the same."

And as thus read, the law contains an *express* prohibition against the alienation of any of the granted lands, given for the furtherance of education, except where the

consent of the beneficiaries of the grant (the inhabitants of the township has been obtained, and an express requirement that in case of such alienation the money received therefor should be impressed with the same trust, and the income therefrom be devoted to the same use as the lands.

The lands sued for in this action were among those granted for the use of schools, and constitute a part of the large total of the lands impressed with this trust, viz., about a quarter of million acres, which are no longer devoted to the use for which they were granted, viz., the use of schools. These lands have passed into private ownership. The consent of the inhabitants of the several townships was never obtained for a diversion of these lands into private ownership. The money arising from a sale of them has never been invested in any productive fund, because there was never any sale, nor any money accruing by reason of their diversion from the use for which granted. These lands have passed from the great public use to which a wise governmental policy devoted them for the benefit of all the people, into the possession of private individuals or corporations by virtue of an alleged statute of limitations of the State of Alabama, through the effect of which those who hold them assert title through adverse possession.

This statute is as follows:

> "Actions by or for the use of any township, for the recovery of sixteenth section or other school lands, belonging to the township, shall be barred if not brought within twenty years."
>
> Code of Alabama of 1886, section 2613;
> Code of Alabama of 1896, section 2794.

It is, therefore, perfectly apparent that these lands were, by an Act of Congress granted for a particular use; that no power of disposing of them existed except with the consent of the beneficiaries; that the disposal with the consent of the beneficiaries, contemplated a sale for value, and that the proceeds of the sale of such lands should stand in lieu of the lands and impressed with the same trust. It is also apparent that these lands are no longer devoted to the uses for which granted by Congress; that no consent of the beneficiaries for their alienation was obtained, and that no fund stands in place of them; that instead of being used for the great purpose for which it was contemplated they would be used, they are in the possession of individuals, who for their private gain reap the benefits accruing for their use, and that this condition has been brought about by a statute of Alabama, the effect of which has been to disregard and overturn the provisions of a Federal statute.

The sixteenth section lands were held to the use of the schools by force and virtue of a Federal statute, made by Congress in pursuance of its Constitutional authority. It is the Act of Congress, operating on these lands and dedicating them to a particular use, which creates the beneficial ownership of the schools in them. That beneficial ownership must continue as long as this Act of Congress continues to operate on these lands; and when this beneficial ownership ceases, it is by reason of the fact (there being, under the agreed statement of fact no question of a sale in accordance with the Act of Congress) that some supervening cause has interrupted the force and operation of the Act of Congress and set it aside. If some supervening cause has interrupted the operation and effect of the Act of Congress, has come between the will of Congress and the beneficiaries under its law, manifestly that supervening cause is in conflict with the Act of Congress. If, being in conflict with the Act of Congress it can pre-

vail over the force of the Act, and interrupt its free operation, then manifestly also, this supervening cause is of superior force and power to the Act.

The defendant in error, claiming the land sued for as against the use to which it was devoted by Congress, claims by virtue of a statute of limitations of Alabama, and hence, of necessity, rests her claim on the superior force of the Act of the Alabama Legislature over the Act of Congress. This claim falls to the ground, and with it the claim and asserted title of the defendant in error, when measured by the provision of the Federal Constitution that:

> "This constitution, and the laws of the United States which shall be made in pursuance thereof, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution and laws of any state to the contrary notwithstanding."

That an Act of the Alabama Legislature through which these lands have been diverted from the public use to which they were devoted by an Act of Congress, into private ownership without the consent of the inhabitants of the township and without compensation is in conflict with the Act of Congress, would seem too clear for argument; and, therefore, under the express and mandatory language of the constitutional provision above quoted, and all the authorities which have construed it, the Act of the Alabama Legislature is void and non-existent. Since then, the plaintiff in error sues upon a title derived through an Act of Congress, and the defendant in error defends through an asserted title derived through an Act of the Alabama Legislature, it would seem too clear for argument that the title of the plaintiff in error must prevail.

While on reason and principle it would seem that the conclusion here reached is inevitable, this Court has rendered it certain by traveling the same ground and reaching the same conclusion in the case of *Northern Pacific Railroad Company v. Townsend*, 23 Sup. Ct. Rep. 771. In this case the precise legal question here presented came under consideration. The facts were that by an Act of Congress a right of way over certain lands was granted to the railroad company for the construction of a railroad. Under the Minnesota statute of limitations claim was laid by a private citizen, by way of adverse possession, to a part of the granted land. The Minnesota Court held the title perfected in the individual and against the railroad company through the operation of the state statute of limitations. On appeal the following opinion was rendered by this Court:

> "Conceding the adverse possession and its efficacy under the state law as against the railroad right of way to be as found by the State Court, the sole question which arises, then, for decision is whether, in view of the provisions of the Act of Congress to which we have referred, an asserted title by adverse possession can be made efficacious as respects the property in controversy. And depending, as the question does, upon the nature and effects of the Acts of Congress, its solution necessarily involves a Federal question.
>
> In determining whether an individual, for private purposes, may by adverse possession, under a state statute of limitations, acquire title to a portion of a right of way granted by the United States for the use of this railroad, we must be guided by the doctrine enunciated in *Packer v. Bird*, 137 U. S. 661 and approvingly referred to in *Shively v. Bowlby*, 152 U. S. I., viz.:

"The courts of the United States will construe the grants of the general government without reference to the rules of construction adopted by the states for their grants; but whatever incidents or rights attach to the ownership of property conveyed by the government will be determined by the states, *subject to the condition that their rules do not impair the efficacy of the grants or the use and enjoyment of the property by the grantee.*'" (Italics ours.)

"Following decisions of this Court construing grants of rights of way similar in tenor to the grant now being considered (*New Mexico v. U. S. Trust Co.*, 172 U. S. 171; *St. Joseph & Denver C. R. Co. v. Baldwin*, 103 U. S. 426) it must be held that the fee passed by the grant made in section 2 of the Act of July 2, 1864. But, although there was a present grant, it was yet subject to conditions expressly stated in the Act, and also (to quote the language of the Baldwin case) 'to those necessarily implied, such as that the road shall be * * * used for the purposes designed.' Manifestly the land forming the right of way was not granted with the intent that it might be absolutely disposed of at the volition of the company. On the contrary, the grant was explicitly stated to be for a designated purpose,—one which negated the existence of the power to voluntarily alienate the right of way or any portion thereof. The substantial consideration inducing the grant was the perpetual use of the land for the legitimate purposes of the railroad, just as though the land had been conveyed in terms to have and to hold the same so long as it was used for the railroad right of way. In effect, the grant was of a limited fee, made on an implied condition of reverter in the event that the company ceased to use or retain the land for the purpose for which it was granted. This being the nature of

the title to the land granted for the special purpose named, it is evident that to give such efficacy to a statute of limitations of a state as would operate to confer a permanent right of possession to any portion thereof upon an individual for his private use, would be to allow that to be done by indirection which could not be done directly. * * * Congress having plainly manifested its intention that the title to, and possession of, the right of way should continue in the original grantee, its successors and assigns, so long as the railroad was maintained, the possession by individuals of portions of the right of way cannot be treated, without overthrowing the Act of Congress, as forming the basis of an adverse possession which may ripen into a title good as against the railroad company.' '

There can be no substantial difference in the legal effect of a grant as in that case, "for the construction of a railroad," and the grant made in the Act of March 2, 1819, whereby the 16th section lands were granted "for the use of schools."

As the Court said in the case of the land granted "for the construction of railroads," so may it be better said of the grant "for the use of schools," that:—"Manifestly the land * * * was not granted with the intent that it might be absolutely disposed of at the volition of the company (state). On the contrary, the grant was explicitly stated to be for a designated purpose,—one which negated the existence of the power to voluntarily alienate the right of way (the land granted) or any portion thereof. The substantial consideration inducing the grant was the perpetual use of the land for the legitimate purposes of the railroad (the schools) just as though the land had been conveyed in terms to have and to hold the same so long as it was used for the railroad right of way (the schools).

In effect the grant was of a limited fee, made on an implied condition of reverter in the event the company (the State) ceased to use or retain the land for the purpose for which it was granted. This being the nature of the title to the land granted for the special purpose named, it is evident that, to give such efficacy to a statute of limitations of a state as would operate to confer a permanent right of possession to any portion thereof upon an individual for his private use, would be to allow that to be done by indirection which could not be done directly."

The case here presented is infinitely stronger than the one in which the Court used the language cited. Back of the intent manifested by the very language of the Act, stood that far sighted and beneficent wisdom and policy which went on record in the Act of Congress in 1785 in reserving each sixteenth section and in the Ordinance of 1787 in declaring:

> "Religion, morality and knowledge being necessary to good government and the happiness of mankind, SCHOOLS AND THE MEANS OF EDUCATION SHALL BE FOREVER ENCOURAGED."

As stated above, the plaintiff draws its title from the Act of Congress, the defendant draws his title from the Act of the Legislature. These titles collide. As the authority out of which the titles arise follow them all along their projection, the point of collision is the point where a line drawn straight from the Act of Congress intersects with a line drawn straight from the Act of the Legislature. Where the title arising out of the respective Acts conflict, the Acts conflict, and it would be the idlest folly to argue as to which prevails. The title claimed to arise out of the Alabama statute of limitations fails because the Act to which it relates, fails as against the Act of Congress and the title granted by it.

The question has also been definitely passed upon in the case of *Trustees of Vincennes University v. The State of Indiana*, 14 Howard 269.

In that case a bill was filed under an Act of the Indiana Legislature which authorized the trustees of the University to file a bill against the state for the purpose of raising the question decided. It appeared that in 1804 Congress passed an act making provision for the disposal of the public lands in the Indiana Territory and for other purposes in which it reserved from sale a township in each one of three districts, to be located by the Secretary of the Treasury for the use of a seminary of learning. The township was located by the Secretary in conformity to the Act and the Territorial Legislature incorporated a Board of Trustees for the University for whose use the land was reserved.

Thereafter, the State of Indiana, through its legislative branch, authorized the sale of this land, and the money was converted into its treasury. The bill assailed the right of the State to divert the property from the uses to which it was dedicated.

The Court was divided on the question as to whether the legal title to the lands vested in the Board of Trustees on its creation or in the state in trust. The majority opinion held that the legal title vested in the Board when it was created, the dissenting opinion held that the title was in the state, but both agreed as to the lack of power in the state to divert the fund. The majority opinion by Mr. Justice McLean held:

> "The seminary township in question was not a donation from the State, but from the United States. It was reserved and designated out of the public lands, before they were offered for sale and consequently so

> munificent an endowment for a literary institution must have increased the value of the public lands in that part of the state, and made them more desirable. And this consideration, no doubt, induced Congress to have designated, for seminary purposes, a township of land in each land district. Every purchaser of the public lands in each district acquired an interest in the reservation. And if these reservations had been judiciously managed, they would have constituted a fund at this time, of at least two hundred thousand dollars. This would have afforded the means of educating, in each land district, as many students, free of charge, as would ordinarily desire classical instruction. Such an advantage was too obvious to be overlooked, or not to be appreciated by the purchaser of the public lands in these districts."

We break the quotation here to observe that every word of this argument applies with full force to the 16th section grants in this state. The 16th section is about as near the center of the township as can be practically located and such location was, beyond doubt, advisedly and designedly made, and presupposes an intention of perpetual use.

The Court continues:

> "The complainants" (the Board of Trustees) "by accepting and exercising their corporate powers, acquired certain rights and made certain contracts, which the state has no property, and can exercise no power to defeat the trust. But this has been done by the Legislature, not only by appointing an agent to collect the funds due to the corporation and paying them into the state treasury; but, by selling the lands, they have diverted the fund, for the preservation and management of which the corporation was instituted.

This was an extraordinary proceeding and was wholly without authority."

In the dissenting opinion, Chief Justice Taney said, with reference to the point we are discussing:

> "This reservation from sale, as well as the reservation of THE SCHOOL SECTIONS IN THE SEVERAL TOWNSHIPS, undoubtedly dedicated them to the uses for which they were reserved; and they CANNOT BE APPROPRIATED BY THE STATE TO ANY OTHER PURPOSE."

In this State *it was recognized* that the State had no right to sell the lands, so such action was authorized by Congress. If the power did not exist to change the FORM of the donation, although preserving it in its entirety to another *form,* how can it be possible for the power to exist to DEFEAT the use for which the lands were granted ENTIRELY by indirectly giving them away to private ownership? If the State had no power, because of the uses to which these lands were dedicated, to sell them for value to private owners, how much further from its possession must be the asserted power to give them away into private ownership?

We desire, in this connection, to call to the attention of the Court the case of *Springfield Township v. Quick,* 6 Indiana 83. This case is of interest because the history of the legislation affecting school lands in Indiana is exactly analogous to the history of the legislation affecting school lands in Alabama. In each case the grant was *not to the State,* as was the case in Michigan and some other states, but to "the inhabitants of the several townships." In each case this grant was incorporated in the proposals made to the state, the acceptance of which was a condition precedent to the admission of the state. In each case the pro-

posals were accepted; in each case there was thereafter a petition to Congress for leave to sell the lands, and in each case leave was granted, provided a majority of the inhabitants of the township consented thereto, and in each case there was a provision that the proceeds of such sale should be applied to the purpose for which the lands were granted and *to no other.*

In the Indiana case there was a supplementary appropriation by the Legislature to school funds, to equalize the amount received by each township. It was contended that this was a diversion. The Supreme Court of Indiana held that it was *not a diversion,* and hence that the statute making it was not invalid, and on appeal the Supreme Court of the United States was of the same opinion; it being most clearly held in each case that HAD THE STATUTE AMOUNTED TO A DIVERSION OF THE PROPERTY GRANTED FROM THE PURPOSES FOR WHICH GRANTED, IT WOULD HAVE BEEN INVALID .

See *Springfield Township v. Quick,* 22 Howard, 56. It is of value to note that this opinion was delivered by Judge Catron who had previously rendered the opinion in *Lowery v. Francis, infra.* This fact illuminates the holding of the Supreme Court of the United States. Judge Catron unquestionably held the same views then, as when a member of the Supreme Court of Tennessee, and the decision of the Supreme Court of the United States was undoubtedly in harmony with the principle announced in the Tennessee case.

This particular litigation was again before the Supreme Court of the United States in the case of *Davis v. Indiana,* 94 U. S. 792, and the Court again held that the Indiana statute NOT AMOUNTING TO A DIVERSION OF THE FUND, was valid, carrying with it the inevitable

and necessary implication that had the statute in question accomplished a diversion, it would have been in conflict with the Acts of Congress and hence void. The Court said:

> "The same township of Springfield brought another suit to test the validity of this Act; and the Supreme Court of Indiana having affirmed it, the township brought the case to this Court, on the ground that the Act of the Legislature was in conflict with the Act of Congress. This Court, while holding that it was the intent of the Act of Congress that the money arising from the sixteenth section should be used only for schools within the congressional townships where the section lay, was of opinion that the proviso we have cited from the Indiana statute sufficiently protected the right of the people of the township, and that it was competent for the Legislature of Indiana to place the people of other townships on an equality with them in regard to educational means, out of funds of the state derived from other sources, and that in so doing, they did not violate the conditions of the trust on which the state received those lands."

See also case of *Morton v. Granada M. & F. Academies*, 16 Miss. 773, in which that Court, speaking through Chief Justice Sharkey, held that these lands could not be diverted by the Legislature from the purposes for which granted, saying: "The sixteenth section was certainly a trust property for the benefit of the whole township and could not be diverted from that purpose.

It has been suggested that inasmuch as the cession from Georgia of the Mississippi Territory provided for the admission of a state, under certain conditions that the townships are the beneficiaries of the State of Georgia and not of the United States. This, if true, would not affect the question in the least. Whether the Act of Congress grant-

ing these lands to this use, grows out of a contract obligation or out of generosity, it is still an Act of Congress, and as such is of controlling force and power and superior to any Act of the Legislature of Alabama which runs counter to it. The fact, if it be a fact, that the MOTIVE behind its enactment was a contractual obligation with the State of Georgia, cannot minimize its effect or devitalize its force and vigor. The contract itself was in pursuance of a definite policy of the United States.

Furthermore, the contract with Georgia was only that the new state, to be created out of the Mississippi Territory, should be governed, in the terms on which it was admitted, by the provisions of the Ordinance of 1787. The provisions of this Ordinance were general in its terms, but related back to the specific provision of the Act of 1785, and so far as these provisions concerned education, they have been construed by the invariable course of dealing of the United States Government to mean the grant of sixteenth sections FOR THE USE OF SCHOOLS.

So, the contract with Georgia, if it be of any effect in this case, was simply that the United States would grant to the state to be created sixteenth sections for a limited, single and specified use, namely, for the use of schools. There was no duty resting upon the Federal government, growing out of this contract to grant to the state the fee simple title. Its contract was fully complied with by granting the sixteenth sections for the single use, thereby retaining the title for all other uses. So, the diversion of these lands from that use by the statute of limitations, is not only a surrender of the benefits arising out of the contract between the Federal Government and Georgia, but an abortive effort to affect that part of the title, namely, the use for all other purposes except for schools, with which the state, as trustee, has no concern, and upon which its laws could not operate.

These latter observations, however, are, we take it, immaterial because from whatever cause the Acts of Congress making the grant arose, the title is conferred by those Acts, the state holds, as trustee, through them, in complete subordination to the limitations therein imposed.

Lowery v. Francis, 2 Yerg. (Tenn.)

In this case the Court said, through Judge Catron who afterwards rendered the opinion in *Springfield v. Quick*, 22 Howard 56:

> "The United States, *by the compact with North Carolina* made in 1879, held the legal title to the vacant and unappropriated lands in the State of Tennessee, subject, however, to certain conditions; among which was that she was bound to appropriate to the means of education one section of land of 640 acres to each township. The title of the United States to a portion of the ceded territory, including the district where school lands were situated, was vested in the State of Tennessee by Congress, under condition that she would appropriate 640 acres in each township to the use of schools. The State of Tennessee in fulfillment of the trust, appropriated the various sections of land, usually denominated school lands, to the contemplated objects, that is to the use of schools in the townships and held the legal title to the school lands in trust for the people of the respective townships, and the proceeds to be appropriated to the use of schools within the same. Various acts of the Legislature directing the school lands to be sold, and the proceeds to be appropriated to the purposes of education generally throughout the state were a violation of the compact with Congress, and impaired the obligation of the contract, and were unconstitutional and void."

It will be observed that in this case the inhabitants of the Tennessee townships were the beneficiaries of a compact between North Carolina and the United States, just as the inhabitants of the Alabama townships are the beneficiaries of a compact between Georgia and the United States. And, as the Act of Congress carrying out the contract between North Carolina and the United States for the benefit of Tennessee was violated by Acts of the Tennessee Legislature diverting the gift, so the Act of Congress carrying into effect the contract between Georgia and the United States for the benefit of Alabama, is violated by the Acts of the Alabama Legislature diverting the gift from the uses named.

As in the one case the Acts of the State Legislature "were a violation of the compact with Congress, and impaired the obligation of the contract, and were unconstitutional and void;" so, in this case the Acts of the State Legislature "are in violation of the compact with Congress and impaired the obligation of the contract, and are unconstitutional and void." These were the views of the Judge who afterwards delivered the unanimous opinion of the Court in *Springfield v. Quick*, 22 Howard, 56. It cannot be doubted that they were expressed to, and concurred in, by the whole Court.

It must also be observed that by granting these lands for a particular use, the United States reserved title for all other uses when they ceased to be used for the purposes for which granted. In *Northern Pacific Ry. Co. v. Townsend, supra,* this Court said:

> "In effect the grant was of a limited fee, made on an implied condition of reverter in the event that the company ceased to use or retain the land for the purpose for which it was granted."

The implied condition of reverter existed, of course, because there was by granting the land for a special purpose, a right to retain it for all other purposes when the grantee ceased to use or retain it for the purpose for which granted. This being true the sixteenth section lands granted for school purposes in Alabama, were *unappropriated* for any other use, except the use for scholos, and on ceasing to be held or used for schools, were *unappropriated* lands, and came within the influence of the disclaimer required by the Act of March 2nd, 1819, and expressed by the Ordinance adopted by the Constitutional Convention of Alabama, under which the state was organized and admitted into the Union, as expressed in the following language:

> "This convention for and in behalf of the people inhabiting this state, do ordain, agree and declare, that they forever disclaim all right and title to the waste or *unappropriated* lands lying within this state."

The United States, therefore, offered the sixteenth section lands for a special purpose, retaining the title to them for all other purposes if they ceased to be used for that purpose, thus holding them as unappropriated lands except for the particular purpose. The people of Alabama expressly disclaimed all interest in and title to unappropriated lands, thus disclaiming interest in and title to the sixteenth section lands if they should cease to be used for schools. The instant, therefore, that the Act of the Alabama Legislature became effective to divert these lands from the use of school it also became effective in violating this disclaimer and is, therefore, void.

SECOND.

These statutes of limitations are not effective to divert title to school lands for another reason.

They conflict with that clause of Section 10 of Article 1 of the Federal Constitution which, so far as applicable, is as follows:

> "No state shall * * * pass any * * * law impairing the obligation of contracts."

Compacts between states (*Covington, etc., Bridge Co. v. Kentucky,* 154 U. S. 204), or between states and the United States are contracts protected by the Constitution of the United States.

> *U. S. v. Great Falls Mfg. Co.,* 21 Md. 118;
> *Fenn v. Kinsey,* 45 Mich. 446, 8 N. W. 64;
> *Lowery v. Francis,* 2 Yerg. (Tenn.) 534;
> *Fletcher v. Peck,* 6 Cranch, 87.

The Act of March 2, 1819, making certain propositions to the people of the Alabama Territory, and the response of the people in convention assembled, accepting those propositions beyond all question or possibility of argument constituted a contract. The Act of Congress contained the following:

> "Sec. 6. And be it further enacted, That the following propositions be, and the same are hereby, offered to the convention of the said Territory of Alabama, when formed, for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory upon the United States:
>
> 'First. That the section numbered sixteen in every township, and when such section has been sold, grant-

ed or disposed of, other lands equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such townships for the use of the schools.'"

By an Ordinance adopted by the Convention on August 2nd, 1819, this proposition was accepted in the following words:

"This convention, for and in behalf of the people inhabiting this state, do accept the proposition offered by the Act of Congress under which they are assembled."

Here are the essential elements of a contract—a specific offer and an acceptance of that offer. The minds of the contracting parties met in mutual assent to a particular point.

What was offered? Not each sixteenth section to be dealt with by the state as its interests or its caprice might prompt, but every sixteenth section DEDICATED TO A PARTICULAR USE. What was accepted? Not the grant of these sixteenth sections with a reserved right on the part of the state to deal with them as it might will. The acceptance was of the lands as limited by the grant FOR A PARTICULAR USE. The agreement made by each of the contracting parties was that the lands should be granted by one and held by the other FOR THE USE OF SCHOOLS.

Nor was this all. The Convention assembled under this Act under the necessity of framing a constitution which should meet the approval of Congress and which should conform to the provisions of the Ordinance of 1887, as a condition precedent to the admission of the state into the Federal Union. One of the provisions of this ordinance to

which this constitution had to conform, is contained in Article 4 of that Ordinance, viz.:

> "The legislatures of these districts or new states, shall never interfere with the primary disposal of the soil by the United States in Congress assembled."

The primary disposition of these sixteenth section lands was the granting to the inhabitants of the several townships of a limited fee to the use of schools in said lands. To assure the Congress that this condition of the Ordinance of 1787 should be observed with reference to this primary disposition of the soil of these sections, that Convention inserted in that constitution this clause:

> "Schools, and the means of education, shall forever be encouraged in this state;"

(This was the very language of the Ordinance of 1787.)

> "and the general assembly shall take measures to PRESERVE FROM UNNECESSARY WASTE AND DAMAGE, such lands as are, or may hereafter be granted by the United States for the use of schools within each township in this state, and apply the funds which may be raised from such lands, in strict conformity to the object of such grant."

No argument could add to the logical conclusion arising from the mere statement of the facts. It is one of those apparent things that argument cannot aid, that by the Act of Congress and the Act of the people in adopting the Constitution and Ordinance of 1819, that the United States and the people of Alabama agreed:

First.—That the United States gave—for one purpose only—for the use of schools; and that the people of Ala-

bama accepted for one purpose only—for the use of schools,—the sixteenth section lands.

Second.—That the Legislature of the state would never interfere with the primary disposal of the soil by the United States, and that one of the primary dispositions of the soil was the granting of a limited fee in sixteenth section lands for the use of schools. It follows that the diversion of these lands from the public use granted into private ownership through the operation of a statute of limitations of the State of Alabama constitutes an impairment of the obligation of that contract, and an attempted interference with that primary disposal of the soil of the United States which comes squarely within the prohibitive effect of that section of the Federal Constitution which puts it beyond the power of any state to impair the obligation of a contract. Since, therefore, the statutes of limitations on which the holders of these lands rely, did not, in legal contemplation, exist, neither do the rights which they are supposed to have conferred, exist, and though attempted, there has been no sustainable interference with the right of the schools to use these lands because that right is secure and unimpaired in the obligation of that solemn compact out of which was born a sovereign state, the inviolable character of which is assured by the fundamental law on which the whole political structure of this Nation rests.

This question has received judicial consideration. In *Fenn v. Kinsey, supra,* the facts were that by congressional grant in 1856 certain lands had been granted to the state, to the use of railroads. The State of Michigan, in 1877, granted these lands to an individual. In passing on this title asserted by virtue of this grant from the state, the Supreme Court of Michigan held as follows:

> "At the time when the Act of 1877 was passed, it is beyond question that the state was bound by the terms of the Congressional grant, which were formally accepted by the law of 1857, to dispose of none of these lands except for the specific purposes named in the Act of Congress. As the United States reserved all lands not legally disposed of under the trust, and under the grant the state itself had no power to divest them, the Act of 1877 was in direct violation of that clause of the Constitution of the United States which declares that no state shall pass any law violating the obligation of contracts."

The case supports absolutely the contention here made. As in that case, so here, Congress granted lands for a specific purpose. The State formally accepted them for that purpose. Under the ruling in the *Northern Pac. Ry. Co. v. Townsend, supra,* the lands having been granted for a particular use, there was a reservation of title for all other uses, and the State having accepted them for one purpose and attempting through its Legislature, to use them for another, breached the contract to apply them to the particular purpose.

The case of *Lowry v. Francis,* 2 Yerg. (Tenn.) 234, is cited under this section of the Federal Constitution in 8 Fed. Stat. Anno. 765:

> "The United States, by the compact with North Carolina made in 1879, held the legal title to the vacant and unappropriated lands in the State of Tennessee, subject, however, to certain conditions, among which was that she was bound to appropriate to the means of education one section of land, of 640 acres to each township. The title of the United States to a portion of the ceded territory, including the district where school lands were situated, was vested in the

State of Tennessee, by Congress, under condition that she would appropriate 640 acres in each township to the use of schools. The State of Tennessee, in fulfillment of the trust, appropriated the various sections of land, usually denominated school lands, to the contemplated objects, that is, to the use of schools in the townships, and held the legal title to the school lands in trust for the people of the respective townships, and the proceeds to be appropriated to the use of the schools within the same. Various acts of the Legislature directing the school lands to be sold, and the proceeds to be appropriated to the purposes of education generally throughout the State, were a violation of the compact with Congress, and impaired the obligation of the contract, and were unconstitutional and void."

There can be no difference between the legal effect of an Act under which title is transferred by the direct method of a sale and misappropriation of the proceeds and that of an Act whereby the legal title to the same lands is indirectly transferred through a statute of limitations which operates directly on the title, divesting it out of one party and vesting it in another. Since Alabama held title for one use alone, it was not within its power to divert them from that use. Since the diversion is beyond its power, all methods of diversion are equally unlawful.

THIRD.

The Supreme Court of Alabama, in its opinion in this case, which this Court is asked to review, lays great stress on the case of *Cooper v. Roberts,* 18 Howard, 173. In that case, discussing the nature of the title of the State of Michigan to lands granted to it by Congress for school purposes, the Court said:

> "The trusts created by these compacts relate to a subject certainly of universal interest, but of municipal concern, over which the power of the state is plenary and exclusive. In the present instance, the grant is to the state directly, without limitation of its power, though there is a sacred obligation imposed on its public faith. We think it was competent to Michigan to sell the school reservations without the consent of Congress."

That case is differentiated from the case at bar in the following particulars:

First.—There the grant was, as the Court points out, to the state directly. Here, the grant is not to the state directly, but is to the inhabitants of the several townships.

2nd. There, as the Court points out, there was no limitation on the power of the state to dispose of the lands. Here, as shown above, the state admitted that it did not have the power of disposition, and petitioned Congress for it; and Congress, agreeing that the power to sell the lands was not in the state, granted the power to sell, but imposed limitations on the power.

It will not do to say that the original grant carried with it the power to sell, and it was not necessary for Congress to grant permission to sell, for even if it was true

that the state had, from the beginning and under the original grant the power of sale, the state had an absolute right to consent to a limitation of that power, did ask for it, and in accepting the Act of March 2nd, 1827, consented to a limitation of its powers if it originally had the power of sale. It is not a case of a grantee, endeavoring by a subsequent instrument to limit the estate granted. Congress did not force the state to accept the Act of March 2nd, 1819. If the state, by virtue of the original grant, possessed the power to sell these lands, then it was a perfectly competent party to agree to a limitation of that power. It not only consented but initiated the limitation subsequently imposed.

Third. The case presented in *Cooper v. Roberts* was not a waste by the trustee of the trust estate, but a mere change of the form of the trust property. It does not appear that the proceeds of the sale were diverted from the purposes of the trust, as in this case the trust property undoubtedly is.

The Court in that case was dealing with a trust. In holding that the state, as a trustee, had plenary and exclusive power, it most certainly meant that the power of the state was plenary and exclusive *in the administration of the trust*. Certainly in no court could the doctrine ever obtain that a trustee had plenary and exclusive power to defeat and destroy the trust.

The Court there was dealing with a detail of the administration of the trust, viz.: whether the trust property should be in the form of land or money. It may be, though we do not concede it, that to that extent the trustee's power was plenary and exclusive. Here, the question is not a mere matter of the administration of the trust, but the question whether the trustee, if the state was a trustee, had the power to defeat a trust, created by the general gov-

ernment, for the perpetuation of good government, by authorizing the acquisition of the trust property by private individuals, without compensation, through the operation of a statute of limitations. We apprehend that if such power did exist that the state had the fee simple, and that the estate was not, as the Court in *Cooper v. Roberts* supposed it to be, a trust estate. An absolute power of disposition by the trustee, to the ruin of the beneficiaries, is not compatible with the idea of a trust. Such absolute power of disposition can exist only in connection with a fee simple estate.

In an attempt to weaken the force of the ruling in *Northern Pac. Ry. Co. v. Townsend, supra,* the defendant in error cited to the Court below the case of *Northern Pac. Ry. Co. v. Ely,* 197 U. S. I. In that case the ruling in Townsend's case is expressly upheld. The Court in that case held that after the railroad, for the construction of which the lands were granted had been fully constructed, the purposes for which the grant was made, having been completely accomplished, the property was relieved of the limitations upon the grant and might become the subject of adverse possession.

Under that decision the lands here involved would become the subject of adverse possession when it was certain there would never be any more schools or any more children to be educated within the township.

All of which is respectfully submitted,

Robert C. Brickell

Attorney General of Alabama.

R. B. Evins

Attorneys for the Plaintiff in Error.

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No. 595.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1913.

THE STATE OF ALABAMA, *Plaintiff in Error.*

vs.

SUDIE SCHMIDT, *Defendant in Error.*

Brown Printing Co., Montgomery, Ala.

INDEX TO BRIEF.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1913.

THE STATE OF ALABAMA, *Plaintiff in Error.*

vs.

SUDIE SCHMIDT, *Defendant in Error.*

Motion of the Defendant in Error to Dismiss The Appeal, And Argument of J. K. Dixon, of Counsel for the Defendant in Error in Support of said Motion, and Brief and Argument on the Merits of said Cause.

MOTION TO DISMISS APPEAL.

Comes the defendant in error, Sudie Schmidt, and moves this court to dismiss the appeal taken by the State of Alabama in the above cause, on the following grounds:

1st. That by this appeal the State of Alabama seeks to have this Court to declare invalid its own statutes and to overturn the decisions of its own Court, and this Court has no jurisdiction to hear and determine such appeal.

2nd. That said appeal is seeking to review the decisions of the State Court on the question of the statute of limitations, and of which question this Court has no jurisdiction.

BRIEF AND ARGUMENT IN SUPPORT OF SAID MOTION TO DISMISS.

1. This case is unique, in that it is an attempt by a sovereign state to have the Federal Supreme Court declare invalid one of its own statutes and to overturn the decisions of its own Supreme Court, which has stood for almost one hundred years. We are unable to find any similar case reported.

This appeal is taken under Sec. 237 of the Judicial Code of the United States, 36 Statutes at Large, Sec. 1156, allowing writs of error to Supreme Court from the decision of the State Supreme Court under certain conditions. Under this law it does not seem to us that it was the intention of Congress to allow a state to pass laws giving to its inhabitants certain property rights, and after having the same tested in its own court time and time again allow a state to appeal to the Federal Court and ask that court to declare invalid such statutes and overturn such opinions. We do not think that this Court will take jurisdiction of such a case, even if it should have the authority to review the decision of the Supreme Court of Alabama if raised by any other person or corporation.

This suit was brought by the state in its own name for certain lands which constituted part of the sixteenth section school lands, given to the State of Alabama by an act of congress approved March 2nd, 1819, and the authority for bringing this suit by the state in its own name is stated to be under Sec. 3859 of the Code of 1907, set forth on page 4 of the brief filed by plaintiff in error. The legal title of these school lands being in the state, it would have the right, notwithstanding such statute, to bring ejectment, in fact suits of this kind were brought by the state for many years before the enactment of Section 3859

of the Code of 1907, this provision of law first appearing in the Code of 1907, which took effect May 1st, 1908. So it would seem that there is no question but what this is an action by the state in its own behalf, the same having been brought by the Attorney General in the name and on behalf of the state, and this appeal or writ of error was sued out in the name and on behalf of the state by its Governor. (See pages 15 and 16 of the transcript in this cause.)

As is stated in the brief by plaintiff in error, there is perhaps a quarter of a million acres of land in Aalbama within the sixteenth sections which are held in the same manner that this land is held, that is, held by people who have purchased the same, bona fide, from others who were in possession of same and who had good title by adverse possession under the statutes and decisions of the State of Alabama. In this case it was agreed that the defendant in error and those under whom she claims had been in actual, open, notorious and continuous possession, under color of title and claim of purchase since the first day of January, 1870.

In many cases, if not in fact a majority of cases, this property was originally acquired by purchase from the state but no patents were issued, and, on account of the condition in which the records are kept throughout the state, rights acquired by people in possession were uncertain, so to prevent the loss by these bona fide holders of sixteenth section land the state, early in the history of the state, enacted laws authorizing the quieting of these titles by showing an adverse holding for the statutory period.

The first time that these statutes and the rights of the State to these sixteenth section lands was considered by the Supreme Court of this state was in 1842. In the case of

Long & Long v. Brown, 4th Alabama, page 622, it was held that:

> "A sale of a sixteenth section pursuant to the act of the legislature is valid, and binding on the inhabitants of the township."

The question of the validity of the statute of limitations was first considered and decided in 1861 in the case of *Miller v. The State*, 38 Ala., 600, in which it was held that such statute was valid, and that a person who acquired title as provided by the laws of Alabama as then in force would have a good and perfect title by adverse possession. This decision was reaffirmed in the cases of:

State v. Connor, 69 Ala. 212;
Gaston v. The State, 88 Ala. 459;
Wyatt v. Tisdale, 97 Ala. 594;
Tenn. C. I. & R. R. Co. v. Linn, 123 Ala. 112;
Coxe v. Board of Trustees of the University of Alabama, 161 Ala. 639; and the present decision of *The State v. Schmidt*, 61 South. Rep. 293.

It will be seen from these decisions that the law authorizing the acquiring of title by adverse possession was enacted prior to 1840, and has been upheld since that time by numerous decisions of the Supreme Court of Alabama, and has never been before questioned in the Federal Courts.

The contention which we make and urge is that under the statutes of Alabama, authorizing the defendant in error, and others who hold in the same manner she does, to acquire property by adverse possession or to purchase the same from people who had acquired it by adverse possession, and the decisions of the state construing this as valid, estops the State of Alabama from appealing or

suing out a writ of error from its court to the Supreme Court of the United States, thus seeking to overturn such statutes and decisions. In other words, we insist that this court will not take jurisdiction of the appeal by a state which seeks in such action to deprive its own citizens of property acquired by bona fide purchase of land to which the title had been declared valid by the state laws and decisions.

We do not think that this jurisdiction can be upheld on the theory that it is not in fact a suit by the State but a suit in the name of the State for the benefit of certain citizens of the State who are entitled to the proceeds of the sixteenth section, because as a matter of fact it is a suit by the State itself, as is shown by the manner in which the suit is brought and the writ of error sued out. The State cannot sue out a writ of error in its own name and behalf based on the rights of some third persons.

> "To support the jurisdiction of this court the right or title claimed under a treaty or act of Congress must be claimed by the plaintiff in error for himself and not for a third person."
>
> *Henderson v. Tennessee*, 10th How. 111;
> *Long v. Converse*, 91 U. S. 105;
> *Miller v. Nat'l. Bk. of Lancaster*, 160 U. S. 542.

So if this be the claim notwithstanding this the appeal cannot be sustained.

II. This appeal or writ of error is simply to test the question of the validity of the statute of limitations on the State law, and a writ of error does not lie for such purpose.

> "The Supreme Court of the State may construe and apply the statute of limitations enacted by the State

Legislature, and its decision in that regard is not subject to re-examination here under a writ of error to a state court."

Gilson P. Harrison v. Esther D. Myer, 92 U. S. 111.
McStay v. Freedman, 92 U. S. 723.

For the reasons herein stated, we respectfully submit that the appeal should be dismissed and the writ of error denied.

BRIEF AND ARGUMENT ON THE MERITS OF THE CASE.

STATEMENT OF THE CASE.

This suit is based on a suit by the State to recover certain sixteenth section lands from the defendant in error, Sudie Schmidt. It is admitted that these lands were part of the lands which were referred to in the act of congress approved March 2, 1819, which is the act admitting Alabama into the Union as a State, and that the defendant in error has been in actual, notorious and adverse possession of the same, fully complying with the laws of the State of Alabama in that respect, since 1870, and at that time that she and those under whom she claimed acquired and held such property under color of title and under claim of purchase. The claim of the State is that notwithstanding the laws of the State of Alabama authorizing the defendant in error to acquire such property in the manner stated that it is contrary to the act of Congress granting this property to the State, and that such laws are invalid and such title so acquired is insufficient to defeat this suit for possession.

BRIEF CONTAINING LEGAL PROPOSITIONS ASSERTED.

The sixteenth section lands, which included the land the subject of this suit, were given to the State by the act of Congress admitting Alabama, approved March 2, 1819, found in 3d U. S. Statutes at Ladge, page 489, and that part of such act which bears on this land is as follows:

> "Sec. 6. And be it further enacted, That the following propositions be, and the same are hereby, offered to the convention of the said territory of Alabama,

when formed, for their free acceptance or rejection, which, if accepted by the Convention, shall be obligatory upon the United States:

First. That the section numbered sixteen in every township, and when such section has been sold, granted, or disposed of, other lands equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such townships for the use of schools."

In response to this act the Constitutional Convention on the 2nd day of August, 1819 adopted the following ordinance:

"This Convention, for and in behalf of the people inhabiting this State, do accept the proposition offered by the act of Congress, under which they are assembled; and this Convention, for and in behalf of the people inhabiting this State, do ordain, agree, and declare, that they forever disclaim all right and title to the waste or unappropriated lands lying within this State; and that the same shall be and remain at the sole and entire disposition of the United States, and, moreover, that each and every tract of land, sold by the United States after the first day of September next, shall be and remain exempt from any tax, laid by the order or under the authority of this State, whether for State, county, township, parish, or any other purpose whatsoever, for the term of five years from and after the respective days of sale thereof; and that the lands belonging to the citizens of the United States, residing out the limits of this State, shall never be taxed higher than the lands belonging to persons residing therein; and that no tax shall be imposed on the property of the United States; and that all navigable waters within this State shall forever remain public highways, free to the citizens of

this State and of the United State, without any tax, duty, impost, or toll therefor, imposed by this State; and this ordinance is hereby declared irrevocable, without the consent of the United States."

Political Code of 1907, pages 82-83.

"The grant of sixteenth sections by the act of Congress of the 2nd of March, 1819, is in perpetuity to the inhabitants of the several townships, but the legal title to the land is in the State, in trust for the inhabitants of the respective townships in which the lands lie, and a sale of a sixteenth section, pursuant to the act of the Legislature is valid, and binding on the inhabitants of the township."

Long & Long v. Brown, 4 Ala. 622.

"This grant by Congress cannot properly be called a donation; it was the performance merely of a solemn obligation created by the compact with Georgia."

Long & Long v. Brown, 4 Ala. 622-629.

Congress after the enactment of such law did not have any right whatever to interfere in regard to the manner in which these lands were disposed of by the State, and therefore the petition of the State for authority to sell and the act approved March 2nd, 1827, found in 4th U. S. Statutes at Large, page 237, was unnecessary and unauthorized.

36th Cyc., pages 874-876.
Long & Long v. Brown, supra.
Cooper v. Roberts, 18 How. 173, pg. 182, in which 4th Ala. 622, above cited is cited with approval.

Beecher v. Deatherby, 95 U. S. 517, citing with approval *Cooper v. Roberts, supra.*

"The trusts created by these compacts (referring to this grant of sixteenth section land) relate to a subject certainly of universal interest but of municipal concern, over which the power of the State is plenary and exclusive."

Cooper v. Roberts, 18 How. 173-182.
Van Santvoord v. Roethler, 35 Oregon 250.
76 Am. State Reports, pgs. 472-479.
36th Cyc. pg. 868.
Street v. Columbus, 75 Miss. 822.
Daggett v. Boncwitz, 107 Ind. 276.

"When by act of Congress sixteenth sections of public lands were dedicated to the states for the support of schools, and the same were selected, the title thereto vested in the State and inhabitants of the township, and a claimant entering into possession of any portion of such land while the title was in the United States did not prevent his holding from being adverse to the township as soon as the title vested in it."

Hargis v. Congressional Township, 29 Ind. 70.
See note *Schneider v. Hutchinson*, 76 Am. St. Rep., page 486.

"In Alabama a person to have adverse possession must have either color of title or bona fide claim of inheritance or purchase; otherwise, file a declaration of adverse possession."

Sec. 1541 of the Code of 1896.

"The policy of our statutes of limitations is repose to titles. The benefits and immunities they confer,

are for the response of adverse holders, who have been in continuous possession, asserting ownership, for the length of time the statute prescribes."

Barclay v. Smith, 66 Ala., pages 230-232.

"A purchaser of school lands derives his title from the State and not from the United States, and the laws of the State authorizing the acquiring of title by adverse possession would be valid."

32 Cyc. 895.
1 Cyc. 1113.

"The statute of limitations runs against the title to the land as far as the inhabitants of the township are concerned even if it did not run against the State, the title vesting in them as trustees upon the organization of such township."

Miller v. The State, 38 Ala. 600.

"The authority of the Legislature to make the statute of limitations apply to suits by the State, or for the recovery of sixteenth section lands is not doubted, and there is no reason why a different construction should be given the statute by a different principle applied when the suit is by the State, or one claiming through the State, than that applied to private persons."

Wyatt v. Tisdale, 97 Ala. 594-596.
Prestwood v. Watson, 111 Ala. 604-609.
Tenn. C. I. & R. R. Co. v. Lane, 123 Ala. 112.
Gaston v. The State, 88 Ala. 459.
State v. Schmidt, 61 South. Rep. 293.
Schneider v. Hutchinson, 76 Am. St. Rep., note 486.

"Adverse possession which is sufficient to bar the legal title of the trustee also bars the equitable estate of the cestui que trust. And this is so even though the cestui que trust is under some disability such as infancy or coverture."

1st Cyc. pg. 1121.
Meeks v. Olpharts, 10 Otto. 564.
Coxe v. Board of Trustees of the University of Alabama, 161 Ala. 639-656.

"Where a suit is prosecuted in the name of the United States only on behalf of private persons, it is barred by laches and by the statute of limitations, if such are so barred."

Henry Curtner v. United States, 149 U. S. 664.

"If through erroneous action of its officers, the bounty of the government in the particular instance has not reached those for whom it was intended, but has reached beneficiaries who were not intended to have these particular lands, the government may be relied on to effectuate its own designs, and to make good any moral obligation that rests upon it; but it had not such pecuniary or other interest in this litigation as entitled it to ask the suspension of the beneficient rules applied by the courts in the administration of justice between individuals."

Curtner v. United States, supra.
Shaffer v. Scudday, 19th How. 18.

ARGUMENT.

From the foregoing citations of authorities it would seem beyond question that the title to the sixteenth section lands donated by Congress to the State of Alabama was a gift from the United States to the State, in carrying out its contract with the territory of Georgia, and that such act granted the legal title to the State of Alabama, in trust for the inhabitants of the township, and that the United States, after the passage of the act admitting the State into the Union and acceptance of the same by the State, had no further interest or rights in these lands, and that the State had the absolute power to say how the same should be sold or disposed of, and that any act of Congress afterwards in reference to the same would be of no effect. This was held in the early case of *Cooper v. Roberts*, 18 How. 173, which case after citing with approval the case of *Long & Long v. Brown*, 4th Ala. 622, holds that such lands although of universal interest "are of municipal concern, over which the power of the State is plenary and exclusive." This case had reference to a similar grant to the State of Michigan of sixteenth section school lands and the question as to the necessity for Michigan to petition for the right to convey them was considered. This court in that case holds that further legislation of Congress was unnecessary. This case of *Cooper v. Roberts* is approved and upheld in the case of *Beecher v. Weatherby*, 96 U. S. 517, and is admittedly accepted as the universal law throughout this country as shown by 32 Cyc. pages 868-874, in which numerous state decisions in addition to the United States Supreme Court cases are cited to uphold this proposition. This being true, the act of Congress of March 2, 1827, so much relied on by counsel for plaintiff in error, had no effect. But if this act itself was to be considered it would not change the effect of the law, that the title to this land was in the

State for the benefit of the township trustees, and although the states might not devote it to this purpose it was a matter that concerned the State Legislature and the inhabitants of the township and not the United States, and if the State saw fit to enact laws authorizing individuals to acquire right or title to the same in a proceedings or manner different from that set forth in the act itself would be a breach of good faith on the part of the State but the United States could not interfere.

See *Curtner v. United States*, 149 U. S. 662.

Under the statutes and decisions existing in the State of Alabama no injustice has been done to the inhabitants of the township in regard to these lands, without it has been done by the State itself, because, as is stated in the case of *Long v. Brown*, 4th Ala. 622, these lands were leased or sold by the State as provided by law but the collection of the notes and the care of the land was neglected by the State, and probably the funds received were dissipated by the State. In a great many cases in the early history of the State no patents were issued and there being no provision of law in regard to preserving the memorandum of land sales, the only way to protect the purchasers and the bona fide holders of these lands was to enact a law to quiet title by adverse possession, and this was done as early as 1840. This statute continued in existence until 1876, when it was repealed and a new statute allowing adverse possession was re-enacted in the Code of 1889, which specifically allowed the acquiring of title by adverse possession of twenty years. This remained the law of Alabama until the adoption of the Code of 1907, and the law makers, doubtless believing that a sufficient time had existed to preserve the rights of all bona fide holders, repealed the same. As stated before, it would be clearly unjust and improper for the United States, the State itself or the inhabitants of the township to be al-

lowed to expel thousands of people who are now occupying, and have occupied for more than twenty years, a quarter of a million acres of land in this State. In almost every instance, as in the case at bar, they purchased the same from holders who apparently had a good title and who did have a good title under the laws of the State of Alabama and under its decisions. For these decisions now to be overturned would be to mean that property rights thus acquired would be stricken down and the land with all the improvements would be lost.

The title of the defendant in error is admitted to be good, without the title is in the government of the United States. We say that under the decisions of the United States Supreme Court and numerous others herein cited, the title is in the State of Alabama for the benefit of the inhabitants of the township, and that adverse possession will bar the cestui que trust whenever the bar runs against the trustee. Clearly the State is barred and the cestui que trust is barred, and there is no title in the Federal Government, and even if any exists it could not be invoked in this suit by the State of Alabama.

See Schulenberg v. Harriman, 88 U.S. 44;
Spokane v. C. & R. Co. vs Washington, 3 N. Co. 219 U
United States vs Northern Pacific R. Co. 152 U.S. 28

AUTHORITIES RELIED ON BY PLAINTIFF IN ERROR.

The principal authority relied on by the counsel for the plaintiff in error is the case of *Northern Pacific Railroad v. Townsend*, 190 U. S. 267, which if it had any application to the case in hand would be decisive of the point at issue, but it has no application to this case whatever. In that case the United States gave simply an easement to the railroad company for a right-of-way of a railroad, and the railroad simply had the right to use it for railroad purposes. It needs no citation of authorities on our part to show that wherever a railroad acquires an easement, whether it be from the United States government or from a private individual, for railroad purposes, that the title reinvests in the original grantor whenever the same ceases to be used for that purpose, and if the grantor is not such a person as against whom adverse possession would run of course the statute of limitations has no application. In this case it being the United States no adverse possession could run against the government. Judge White in deciding this case states the following:

> "The substantial consideration inducing the grant was a perpetual use of the land for the legitimate purposes of the railroad just as though the land had been conveyed in terms to have and to hold the same so long as it was used for a railroad right-of-way. In effect the grant was of a limited fee made on the implied condition of reverture in the event the company ceased to use or retain the land for the purposes for which it was granted."

In the case at bar the United States donated to the State of Alabama "section number sixteen in every town-

ship to the inhabitants of such township for the use of schools." There was no reverter and could not be in such case. There was not a limited fee given but the absolute fee, with the right of sale in the State. It is true that in the act subsequently passed it was stated that it must be with the consent of the inhabitants of the township. Even if this be considered, the consent would unquestionably be presumed by the laches of such inhabitants in failing to assert any rights for more than twenty years, and more than this this is a question for state consideration and not for the federal court.

The Supreme Court of Alabama through Justice McClellan in its decision clearly defines the effect on this case of the decision of the Northern Pacific Railroad Co. v. Townsend, in the following words:

> "Now, the grant in *Northern Pacific Railway v. Townsend*, 190 U. S. 267, 23 Sup. Ct. 671, 47 L. ed. 1044, was radically different from that of the sixteenth section lands. There the donation was for the particular public purpose of constructing a railroad through the public domain. The nature of the grant itself forbade such disposition of the area granted as would defeat its permanent application to the public purpose entertained and expressed in its donation. The opinion takes special, controlling account of this fact. In there determining the nature and character of the estate taken under such a grant, it was, of course, held that an estate in the likeness of "a limited fee' only passed; an implied condition of reverter being raised up to effect the reversion to the government, if the land ceased to be used or retained for the purpose designated. In respect of the school lands, their disposal was anticipated. The grant, in the proposal submitted to and accepted by the State, was of the fee, without limitation upon the power of

the State.—*Cooper v. Roberts, supra.* And the act of Congress purporting to allow the sale of such lands was unnecessary and vain, other than as evidencing the good faith of the State in the premises.—*Cooper v. Roberts, supra; Long v. Brown,* 4 Ala. 622, 629."

See *State v. Schmidt,* 61 South. Rep. 293-294.

It has often been decided that if the lands had been given to the railroad other than a right of way to be used for the building of a railroad itself that adverse possession will run.

Toltect Ranch Co. v. Geo. Cook, 191 U. S. 531.

It was held in the case of *Northern Pacific Railroad Co. v. Ely,* 197 U. S. 1, that even as to the right of way where Congress passed a law authorizing the sale of any portion of the right of way by the railroad and confirming any sales made that this also would include any holders by adverse possession. To the same effect is the case of *Iowa Railroad Land Co. v. Bloomer,* 206 U. S. 484.

The other two cases cited and apparently relied on in behalf of the plaintiff in error, to-wit, the case of *Board of Trustees of Vincennes University v. State of Indiana,* 14 How. 269, and case of *Springfield Township v. Quick,* 22 How. 56, are cases upholding our contention rather than the plaintiff in error. In the first of these cases the United States Supreme Court held in the majority opinion that the State had the right to sell the lands there conveyed and a good title was conveyed to the purchaser and for such reason the Board of Trustees of the University could maintain an action against the State of Indiana for the money so received. The grant in that case, though, was different from the one in hand, but if it has any appli-

cation at all it would be to simply hold that the inhabitants of a particular township could maintain an action against the State for diverting their property. Certainly it is no authority for holding that the State itself could maintain this action against innocent purchasers who have purchased under the decisions and laws of the State holding that their title was good. It is true in this case of Trustees of *Vincennes University v. State of Indiana* in the dissenting opinion the Chief Justice states that in his opinion the legal title was held in abeyance until some new body was brought into existence, capable of taking the title as granted and administering the trust, but a majority of the court evidently held differently and were of the opinion in that case that the legal title passed to the purchaser. In the case at bar there was no question of the title being held in abeyance, as the grant was absolute to the State for the inhabitants of each township.

As to the case of *Springfield Township v. Quick* the holding was simply that the Indiana State laws appropriating the school funds for certain purposes did not violate the act of Congress providing for the proceedings of the sixteenth section should be for the use of the schools in the township, and that the State had the right in that case to do what they did, such decision is certainly no authority to uphold the contention of the plaintiff in error, in this case.

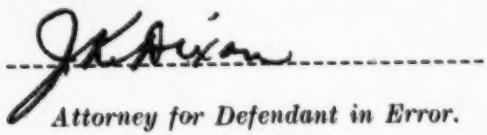
The only other contention made by counsel for plaintiff in error is that these decisions of Alabama and the statute of limitations were in conflict with section 10 of Article 1 of the Federal Constitution that "no state shall pass any law impairing the obligation of the contract." The United States, as has been shown, granted these lands to the State of Alabama at the time of its admission into the Union. The condition attached to the same is as

follows: "Provided always that said Convention shall provided by an ordinance irrevocable without the consent of the United States that the people inhabiting said territory do agree and declare that they forever disclaim all right and title to the waste and unappropriated lands lying within said territory, and that the lands belonging to citizens of the United States residing without the State shall never be taxed higher than the lands belonging to persons residing therein, and that no tax shall be imposed on lands or property of the United States, and that all navigable waters within the State shall forever remain public highways, free to the citizens of the State and the United States, without any tax, duty, impost or toll thereon imposed by the State." 3rd States U. S. at Large, pg. 489. By ordinance adopted on the 2nd day of August, 1819, the inhabitants of this State and territory accepted these conditions. See Political Code of Alabama of 1907, pages 82, 83. The above sets forth the only contract which exists between the State and the United States and really is a consideration for the grant of these school lands and other lands to the State of Alabama. The land in question not shown or claimed to be any part of the waste or unappropriated lands, and it not being shown that the State has not lived up to its part of the contract, there cannot be any impairment of the obligation of the contract on the part of the State. On the other hand it would seem that if the United States government should seek to take back these lands from the State or from the inhabitants who have acquired through the laws of the State that it would be a breach of the contract by the United States government itself.

In conclusion it seems to us that we have clearly demonstrated that the United States Government parted with all rights to this property at the time it enacted the law admitting the State into the Union and parted with them

on the consideration therein set forth and has no further right or interest therein, and therefore the United States Court has no right to interfere with whatever disposition the State may have made of these lands. We, therefore, respectfully submit that the writ of error should be denied and the case affirmed.

Respectfully submitted,



Attorney for Defendant in Error.

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No. 595.

In the Supreme Court of the United States.

October Term, 1913.

THE STATE OF ALABAMA, Plaintiff in Error,

against

SUDIE SCHMIDT, Defendant in Error.

Brief and Argument in Support of Brief Filed by Defendant in Error.

Dispatch Printing Co., Birmingham, Ala.

In the Supreme Court of the United States.

October Term, 1913.

THE STATE OF ALABAMA, Plaintiff in Error,

against

SUDIE SCHMIDT, Defendant in Error.

Brief and Argument in Support of Brief Filed by Defendant in Error.

This brief is filed with the Court through the courtesy of the counsel for the Defendant in Error, the counsel on this brief representing a corporation claiming title to a quarter sixteenth section in Jefferson County, Alabama, by adverse possession of the same as against the State and the inhabitants of the township in which the section lies. The agreed statement of facts in this case substantially set forth the facts involved in our client's claim, and as the statements of the case made in the State's brief and the brief of Mr. Dixon, of counsel for the defendant, are complete, we omit further statement here.

History of Legislation and Decisions as to Sixteenth Section School Lands in the State of Alabama.

A brief history of the legislation and decisions affecting claims of Sixteenth Section lands in the

State of Alabama, based upon adverse possession, is here given for the information of the Court.

On March 2nd, 1819, the Act for the admission of the State of Alabama, 3 U. S., Stats. at Large, became a law. Section 6 of this act provides, among other things, as follows:

> "That the following propositions be, and the same are hereby, offered to the convention of the said territory of Alabama when formed, for their free acceptance or rejection, *which, if accepted by the convention, shall be obligatory upon the United States*—
>
> *First.* That the section numbered sixteen in every township, and when such section has been sold, granted, or disposed of, other lands equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such townships for the use of schools." (*Italics ours.*)

The proposals contained in Section 6 were accepted by the convention and thus the grant of the section numbered sixteen in every township contained in the proposals became effective.

On March 2nd, 1827, "An Act to authorize the Legislature of the State of Alabama to sell the lands *heretofore appropriated* for the use of shcools in that State," 4 U. S. Stats. at Large, 237, became a law. Section One of this Act is as follows:

> "Section 1. Be it enacted, etc., That the legislature of the State of Alabama shall be and is hereby authorized to sell and convey in fee simple, all or any part of the lands *heretofore reserved and appropriated* by congress for the use of schools within said state, and to invest the money arising from the sale

thereof in some productive fund, the proceeds of which shall be forever applied, under the direction of said legislature, for the use and support of schools within the several townships and districts of country for which they were originally reserved and set apart, and for no other use or purpose whatsoever; *Provided*, said land, or any part thereof, shall in no case be sold without the consent of the inhabitants of such township or district, to be obtained in such manner as the legislature of said state shall by law direct; *And provided also*, that in the apportionment of the proceeds of said fund each township and district aforesaid shall be entitled to such part thereof, and no more, as shall have accrued from the sum or sums of money arising from the sale of the school lands belonging to such township or district." (*Italics* ours.)

Prior to the Code of Alabama of 1852 there was no statute of limitations in the state of Alabama limiting the time within which the State might enforce a cause of action brought for the recovery of lands and it was under these conditions that the case of *Miller vs. State*, 38 Alabama, 600, arose. This action was brought in the name of the State for the use of Township 18, Range 11 East in the Coosa Land District vs. Samuel Miller *et al.*, to recover the possession of a tract of land situated in the Section numbered sixteen in this Township. Miller proved continuous uninterrupted adverse possession by him, or his privies in title, of the property in question, for more than ten years before the commencement of the suit. The Supreme Court of Alabama, in holding for the adverse claimant, took the position that the real

parties in interest in the suit under the grant to the State of Alabama, are the inhabitants of the particular township and that though the State was made party to the suit it had no real interest in the litigation, the suit being substantially between the township and the defendant, that therefore the statute of limitations of ten years applying to individuals ran as against the inhabitants of the township.

Prior to this decision, in the case of *Long vs. Brown*, 4 Ala., 622, The Supreme Court of Alabama said at page 629:

> "This grant by Congress cannot properly be called a donation; it was the performance merely of a solemn obligation created by the compact with Georgia, and was intended as a grant to the State, to be held in perpetuity for the use and benefit of the inhabitants of the township. The legal title to these lands could not vest in the inhabitants of the township, as they had no corporate existence, nor could such a capacity be conferred on them by the act of Congress; and it is very certain was not intended to be conferred. *Nor can any doubt be entertained that the legal title was intended to be vested by the act of Congress in this State, and did so vest, by the acceptance of the conditions proposed by the act of 2d March, 1819, by the convention of this State, in August of the same year.*
>
> "By the acceptance of this trust the State impliedly stipulated to do those acts which were necessary to give full effect to the grant, and this trust it has faithfully executed. As early as 1819 agents were appointed to take care of the lands, and subsequently school commissioners were appointed, and trustees

required to be elected by the township for the management of the sixteenth section in each township, who were declared a body corporate.

"As the land in its wild state was of no benefit to the people of the township, and as a revenue could only be derived from it by cultivation, the lands were leased under suitable provisions to preserve them from waste. It was soon, however, discovered that this process would end in the destruction of the land; every where the sixteenth section was in a state of ruinous dilapidation. In this condition of things, application was made to Congress, by the Legislature of this State, for leave to authorize the sale of the sixteenth section, by the assent of the township, which was granted--the proceeds of the sale to be invested in some productive fund.

"*We agree entirely with the counsel for the plaintiff in error, that this act conferred no power; nor had Congress any right whatever to interfere in the matter. It is, however, evidence of the strong desire of the Legislature to act in good faith, and to keep within the pale of the law. Having thus obtained the assent of Congress, the Legislature passed an act authorizing* the sale of the sixteenth section in each township, with the *assent of the inhabitants*, the proceeds to be placed in one of the banks of the State, and to carry interest at the rate of six per cent. per annum, payable quarterly, and secured to the people of the township whose lands were thus sold." (*Italics ours.*)

In the Code of Alabama of 1852 we find the following provisions as to limitations of actions:

"Section 2475. Within twenty years. 1. Actions at the suit of the State of Alabama against a citizen thereof for the recovery of real or personal property.

"Section 2476. Within ten years. 2. Actions for the recovery of lands, tenements or hereditaments, or the possession thereof.

"Section 546. The Trustees of any Township may direct suits at law or equity in all cases affecting the interests of such townships."

These provisions were discussed in *Wyatt vs. Tisdale*, 97 Ala., 594, where the rule stated in *Miller vs. State*, 38 Ala., 600, was reaffirmed and the Court held that under either subdivision one or subdivision two of Section 2475 adverse possession of land included in a sixteenth section made good title and the statute of limitations barred an action for an ejectment.

The rule stated in the case of *Miller vs. State, supra*, was again recognized in *State vs. Conner*, 69 Ala., 212.

In the revised Code of Alabama of 1867 we find the following provisions:

"Section 2899. Within twenty years. 1. Actions at the suit of the State of Alabama against a citizen thereof for the recovery of real or personal property.

"Section 2900. Within ten years. 2. Actions for the recovery of lands, tenements or hereditaments, or the possession thereof.

"Section 618. The Trustees of free public schools of any township may direct suits at law or in equity in all cases affecting the interests of such township."

And in the Code of 1876 the following:

> "Section 3224. Within twenty years. 1. Actions at the suit of the State of Alabama against a citizen thereof for the recovery of real or personal property.
>
> "Section 3225. Within ten years. 2. Actions for the recovery of lands, tenements or hereditaments, or the possession thereof; but this shall not apply to actions brought by the Trustees of any township for the recovery of sixteenth section, or other school lands belonging to the township."

In 1887 the Legislature of the State, by Section 2613 of the Code of 1887, expressly fixed a limitation for actions by or for the use of any township for the recovery of any school lands. This section is as follows:

> "Within twenty years. 1. Actions at the suit of the State against a citizen for the recovery of real or personal property. 2. Actions by or for the use of any township for the recovery of 16th section or other school lands belonging to the township."

An action of ejectment under this section, brought by the State for the use of the township in question, was upheld in *Gaston vs. State*, 88 Ala., 459, the limitations here fixed of twenty years being held to be the limitation which applied. This case was followed by the case of *Prestwood vs. Watson*, 111 Ala., 604, in which the Court again stated that the twenty year limitation fixed by Section 2613 of the Code of 1887 applied.

And this same section, in the same wording, was

incorporated in the Code of 1896, Section 2794, and thereafter in 1898 came before the Supreme Court of Alabama in the case of *T. C. I. & R. R. Co. vs. Linn*, 123 Ala., 112.

Judge Tyson, in his opinion, went into a complete discussion of the cases theretofore decided and recognized the rule as stated in the Miller case, holding that prior to 1887 the statute of limitations of ten years applied, and that thereafter the limitation was twenty years under the express provisions of the Code. All of these cases recognized the doctrine laid down in Long vs. Brown, *supra*, and in none of them was the applicability of the statute of limitations to the sixteenth section school lands questioned.

Since the dicision in the T. C. I. case the question seems to have been considered settled, and many transfers of sixteenth section lands based on titled acquired by adverse possession have since been made in the State of Alabama. The question before the Court, therefore, probably involves the titles to many thousands of acres of land, and citizens of the State of Alabama and of the United States have, in the purchase of these lands, relied upon the rules laid down by the Alabama Courts and the express provisions of the Alabama Statutes. Since the decision in the case of Long vs. Brown in 1843 neither the State nor the inhabitants of any township have questioned the applicability of these statutes of limitations to sixteenth section school lands until the present case was argued before the Supreme Court of Alabama.

BRIEF.

POINT ONE.

The grant of the sections numbered sixteen to the inhabitants of the townships for the use of schools in the State of Alabama, and the acceptance of the proposal contained in Section 6 of the Act for the admission of Alabama by the convention operated as a present grant and immediately divested the title of the United States to the sixteenth sections.

Cooper vs. Roberts, 59 U. S., (18 How.)173;
Hedrick vs. Hughes, 82 U. S., (15 Wall) 123;
Kissel vs. St. Louis Public Schools, 59 U. S., (18 How.) 19;
Campbell vs. Township Number One in Range Number 19, 54 U. S., (13 How.) 244;
Mc Nee vs. Donahue, 142 U. S., 587;
Johanson vs. Washington, 190 U. S., 179;
Beecher vs. Wetherby, 95 U. S., 517;
United States vs. Tully, 140 Fed., 899.

POINT TWO.

The Alabama grant of Sections numbered sixteen in the various townships being a grant of the entire title thereto, without reservation, vests in the grantee or grantees an indefeasible fee simple title and is not governed by the rules of law laid down with reference to grants of rights-of-way to railroads.

See cases cited under "Point One," *supra*.

Deseret Salt Co. vs. Tarpey, 142 U. S., 241;

Rutherford vs. Greene, 15 U. S., (2 Wheat.) 196;
Toltec Ranch Co. vs. Cook, 191 U. S., 532;
Iowa Railroad Land Co. vs. Blumer, 206 U. S., 482;
Missouri Valley Land Co. vs. Wiese, 208 U. S., 234;
Northern Pacific R. R., Co. vs. Ely, 197 U. S., 1.

POINT THREE.

No one can take advantage of the non-performance of a condition subsequent annexed to an estate in fee except the grantor or its successors. The same rule applies to a grant upon condition proceeding from the government.

Schulenberg vs. Harriman, 88 U. S., 44;
Spokane & B. C. R. Co. vs. Washington G. N. R. Co., 219 U. S., 166;
United States vs. Northern Pacific R. Co., 152 U. S., 281.

POINT FOUR.

Nothing in the Alabama grant of the sixteenth section school lands imports a limitation of the fee.

Stuart vs. City of Easton, 170 U. S., 383.

POINT FIVE.

Adverse possession as against a trustee operates as well against the beneficiaries of the trust.

Meeks vs. Olpherts, 100 U. S., 564.

POINT SIX.

Adverse possession against any party in which title is so vested that such party may grant an indefeasible estate in fee simple ripens into a fee simple title by the operation of the Statute of Limitations.

Northern Pacific R. Co. vs. Ely, 197 U. S., 1.
Coxe vs. Board of Trustees of University of Alabama, 161 Ala., 639.

POINT SEVEN.

The decision of the Supreme Court of Alabama should be affirmed.

ARGUMENT.

POINT ONE.

The grant of the sections numbered sixteen to the inhabitants of the townships for the use of schools in the State of Alabama, and the acceptance of the proposal contained in Section 6 of the Act for the Admission of Alabama by the convention operated as a present grant and immediately divested the title of the United States to the sixteenth sections.

Cooper vs. Roberts, 59 U. S., (18 How.), 173;
Hedrick vs. Hughes, 82 U. S., (15 Wall.), 123;
Kissel vs. St. Louis Public Schools, 59 U. S., (18 How.), 19;
Campbell vs. Township Number One in Range Number 19, 54 U. S., (13 How.), 244;
Mc Nee vs. Donahue, 142 U. S., 587;
Johanson vs. Washington, 190 U. S., 179;
Beecher vs. Wetherby, 95 U. S., 517;
U. S., vs. Tully, 140 Fed., 899.

It matters not whether the grant of the sixteenth section lands was to the State or to the inhabitants of the township.

In *Cooper vs. Roberts* the Court said:

> "The appropriation of public lands for that object became a fundamental principle by the Ordinance of 1787, which settled terms of compact between the people and states of the Northwestern Territory, and the original States, unalterable except by consent. One of

the articles affirmed that 'religion, morality, and knowledge, being necessary for good government and the happiness of mankind;' and ordained that 'schools, and the means of education, should be forever encouraged.' This principle was extended, first by congressional enactment (I Stat. at L. 550, sec. 6), and afterwards, in 1802, by compact between the United States and Georgia to the Southwestern Territory. The earliest development of this article, in practical legislation, is to be found in the organization of the State of Ohio, and the adjustment of its civil policy, according to the ordinance, preparatory to its admission to the Union. Proposals were made to the inhabitants of the incipient State to become a sovereign community, and to accept certain articles as the conditions of union, which, being accepted, were to become obligatory upon the United States. The first of these articles is, 'that the section No. 16 in every township, and where such section has been sold, granted or disposed of, other lands equivalent thereto and most contiguous to the same, *shall be granted to the inhabitants of such township, for the use of schools.*' " (*Italics Ours.*)

And in *Beecher vs. Wetherby, supra,* the Supreme Court, by Mr. Justice Field, says:

"The convention which subsequently assembled accepted the propositions, and ratified them by an article in the Constitution, embodying therein the provisions required by the act of Congress as a condition of the grants. With that Constitution the State was admitted into the Union in May, 1848. 9 Stat., 233. It was, therefore, an unalterable condition of the admission, obligatory

upon the United States, that section sixteen (16) in every township of the public lands in the State, which had not been sold or otherwise disposed of, should be granted to the State for the use of schools. It matters not whether the words of the compact be considered as merely promissory on the part of the United States, and constituting only a pledge of a grant in future, or as operating to transfer the title to the State upon her acceptance of the propositions as soon as the sections could be afterwards identified by the public surveys. In either case, the lands which might be embraced within those sections were appropriated to the State. They were withdrawn from any other disposition, and set apart from the public domain, so that no subsequent law authorizing a sale of it could be construed to embrace them, although they were not specially accepted. *All that afterwards remained for the United States to do with respect to them, and all that could be legally done under the compact, was to identify the sections by appropriate surveys; or, if any further assurance of title was required, to provide for the execution of proper instruments to transfer the naked fee, or to adopt such further legislation as would accomplish that result. They could not be diverted from their appropriation to the State.*" (*Italics Ours.*)

The important thing was that a grant for the use of schools or for the purpose of education should be made before admission of a new state into the Union, and by the language used in the decision above cited the Supreme Court of the United States has determined beyond a doubt that the United States, by the grants of sixteenth

section lands, has been divested of title thereto and its sole right and duty with respect thereto, after such grants, was to identify the land granted and, if necessary, to give to the States to whom the grants were made further assurances of title.

Quoting again from *Cooper vs. Roberts, supra*, the Court says:

> "The State of Michigan was admitted to the Union, with the unalterable condition 'that every section No. 16, in every township of the public lands, and where such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the State for the use of schools.' We agree that until the survey of the township and the designation of the specific section, the right of the State rests in compact—binding,—it is true, the public faith, and dependent for execution upon the political authorities. Courts of justice have no authority to mark out and define the land which shall be subject to the grant. *But when the political authorities have performed this duty, the compact has an object upon which it can attach, and if there is no legal impediment the title of the State becomes a legal title.* The *jus ad rem* by the performance of that executive act becomes a *jus in re*, judicial in its nature, and under the cognizance and protection of the judicial authorities., as well as the others." (*Italics Ours.*)

Whether the lands in question be sixteenth section lands, or lieu lands in substitution therefor, so soon as selected and appropriated the title passes out of the United States and its further control or dominion over them ceases. If there is no cor-

porate body or entity, other than the State, in which the title may vest, the State takes the legal title as Trustee until the organization and incorporation of such a body. *Long vs. Brown*, 4 Ala., 622.

If the State is made the grantee it takes the lands impressed with the trust contained in the grant. In either case the title of the United States both legal and equitable, has passed by the grant and its further dominion over the lands is cut off.

Counsel for the State lay particular stress on the fact that the grant in question in the case of Cooper vs. Roberts, *supra*, was directed to the State for the use of schools, while the Alabama grant was to the inhabitants of the townships for the use of the schools. Even conceding that there is the distinction which counsel for the State draws the fact remains that all title has passed out of the United States. We know of no rule of law by which the creator of a trust, after parting with the legal and equitable title to the trust estate, may subsequently come into Court and question the acts of its trustee in the administration of the trust. If any right of action has accrued against the trustee it belongs to the beneficiaries of the trust and they alone may act. In the present case the State of Alabama, subsequent to the grant, incorporated townships and provided for their government and control, and thereupon the legal title must necessarily have vested in the townships.

Counsel for the State, in attempting to distinguish the case of *Cooper vs. Roberts*, *supra*, from the instant case, claim that the State of Alabama, by applying to Congress for power to sell the six-

teenth section lands, admitted that it did not have such power, or any power of disposition over the lands. That no such power was necessary is clearly pointed out by the Supreme Court of the United States in *Cooper vs. Roberts*, in the following language, recognizing that no such admission was made by the State of Alabama and approving the language of the Alabama Supreme Court in *Long vs. Brown*, 4 Ala., 622:

> "The defendant insists that the title of the plaintiff is invalid, for the reason that the State of Michigan was not empowered by Congress to sell the school reservations. Where such grants have been made to the State, or to the inhabitants of the township for the use of schools, it has been usual for Congress to authorize the sale of the lands, if the State should desire it.
>
> 4 Stat. at L. 138, 237, 298; 5 Ib., 600.
>
> "But this consent was not, perhaps, necessary, and the application for it is but evidence of the strong desire of the State authorities to act in good faith, and to keep within the pale of the law. 4 Ala., 622.

> "*The trusts created by these compacts relate to a subject certainly of universal interest, but of municipal concern, over which the power of the State is plenary and exclusive.* In the present instance, the grant is to the State directly, without limitation of its power, though there is a sacred obligation imposed on its public faith. We think it was competent to Michigan to sell the school reservations without the consent of Congress." (*Italics Ours.*)

In view of this language it seems to us that

counsel for the State have made a distinction without a difference.

POINT TWO.

The Alabama grant of Sections numbered sixteen in the various townships being a grant of the entire title thereto, without reservation, vests in the grantee or grantees an indefeasible fee simple title and is not governed by rules of law laid down with reference to grants of rights-of-way to railroads.

See cases cited under point one, *supra*;
Deseret Salt Co., vs. Tarpey, 142 U. S., 241;
Rutherford vs. Greene, 15 U. S., (2 Wheat.), 196;
Toltec Ranch Co. vs. Cook, 191 U. S., 532;
Iowa Railroad Land Co. vs. Blumer, 206 U. S., 482;
Missouri Valley Land Co. vs. Wiese, 208 U. S., 234.

Counsel for the State have laid great stress throughout their brief upon the case of *Northern Pacific Railroad Co. vs. Townsend*, 190 U. S., 267, and in fact based the State's case almost entirely upon the decision of Mr. Justice White in that case. We call the attention of the Court to the following language used in that opinion.:

> "In effect the grant was of a limited fee, made on an implied condition of reverter in the event that the company ceased to use or retain the land for the purpose for which it was granted. This being the nature of the title to the land granted for the special pur-

pose named, it is evident that, to give such efficacy to a statute of limitations of a state as would operate to confer a permanent right of possession to any portion thereof upon an individual for his private use, would be to allow that to be done by indirection which could not be done directly; for, as said in Grand Trunk R. Co. vs. Richardson, 91 U. S., 454, 468, 'a railroad company is not at liberty to alienate any part of its roadway so as to interfere with the full exercise of the franchise granted.' Nor can it be rightfully contended that the portion of the right-of-way appropriated was not necessary for the execution of the powers conferred by Congress, for, as said in Northern P. R. Co. vs. Smith, 171 U. S., 261, 275, speaking of the very grant under consideration: 'By granting a right-of-way 400 feet in width, Congress must be understood to have conclusively determined that a strip of that width was necessary for a public work of such importance.' Neither courts nor juries, therefore, nor the general public, may be permitted to conjecture that a portion of such right-of-way is no longer needed for the use of the railroad, and title to it has vested in whomsoever chooses to occupy the same. The whole of the granted right-of-way must be presumed to be necessary for the purposes of the railroad, as against a claim by an individual of an exclusive right of possession for private purposes."

The Court uses the expression "limited fee" and "condition of reverter" in this connection, but it may well be said that the grant of the right-of-way to the railroad vested in it an easement over the particular land described for its use as a railroad right-of-way, and that when that ease-

ment was abandoned the fee of the property was in the United States free and clear of the easement.

The United States District Court for the the District of Colorado, in *Mills vs. Denver & R. G. R. Co.*, 198 Fed., 137, referred to the Townsend case and held that where the old right-of-way was abandoned it became subject to the acquisition of title thereto by adverse possession. A temporary injunction against the construction of a switching track by the railroad was granted in the District Court on the ground that the plaintiff had title to the land by adverse possession. This injunction was suspended *pendente lite* by the Circuit Court of Appeals in 199 Fed., 988, no opinion being reported. If the District Court was correct in holding that the land could be acquired by adverse possession as though the land of a private individual, then, regardless of the purpose of the grant, it would not be material whether the grant was subject to a condition of reverter or not. If, on the other hand, the Circuit Court of Appeals has reversed this case on the ground that there was a condition of reverter in the grant or on the ground that the grant was nothing more than an easement, it, like the Townsend case, only goes to strengthen the case of the defendant in error here. There is nothing in this case from which a condition of reverter to the United States may be implied. The grant is either a direct grant or a grant in trust pure and simple. There is nothing in its terms which implies that the land granted shall be used for the building thereon of schools or the carrying on thereon of education.

We know of no rule of law by which title would revert to the original grantor of a fee simple estate merely because the grantee had proceeded to dispose of the subject of the grant in a manner detrimental to himself, nor do we know of any rule of law which is to the effect that title would so revert to a grantor of a trust estate merely because the trustee or his beneficiaries under the trust were proceeding to act with reference to the subject of the trust in a manner detrimental to the interests of the beneficiaries.

The Townsend case in this connection should also be examined carefully in connection with the opinion in *Northern Pacific R. R. Co. vs. Ely*, 197 U. S., 1; 49 L. Ed., 639, where it was held that the parts of the right-of-way not actually in use or necessary for the purposes of the railroad, might be acquired by adverse possession against the railroad "so far as title to portions of the right-of-way could be lawfully acquired from the railway company." This language is significant in the case at bar. If the title to the sixteenth section lands could be lawfully acquired from the State and the inhabitants of the township *without* action by the United States Government, or *after* action by the United States Government authorizing a sale by the State with the consent of the inhabitants of the township, title could equally, under the decision in the Ely case, be acquired by adverse possession.

POINT THREE.

No one can take advantage of the non-performance of a condition subsequent annexed to an estate in fee except the grantor or its successors. The same rule applies to a grant upon condition proceeding from the government.

Schulenberg vs. Harriman, 88 U. S., 44;
Spokane & B. C. R. Co. vs. Washington G. N. Co., 219 U. S., 166;
United States vs. Northern Pacific R. Co., 152 U. S., 281.

In the case of *Schulenberg vs. Harriman*, 88 U. S., 44, Mr. Justice Field, in discussing this point, uses the following language:

> "And it is settled law that no one can take advantage of the non-performance of a condition subsequent annexed to an estate in fee, but the grantor or his heirs, or the successors of the grantor if the grant proceed from an artificial person; and if they do not see fit to assert their right to enforce a forfeiture on that ground, the title remains unimpaired in the grantee. The authorities on this point, with hardly an exception, are all one way from the Year Books down. And the same doctrine obtains where the grant upon condition proceeds from the government; no individual can assail the title it has conveyed on the ground that the grantee has failed to perform the conditions annexed.
>
> "In what manner the reserved right of the grantor for breach of the condition must be asserted so as to restore the estate depends upon the character of the grant. If it be a private grant, that right must be asserted by

> entry or its equivalent. *If the grant be a public one*, it must be asserted by judicial proceedings authorized by law, the equivalent of an inquest of office at common law, finding the fact of forfeiture and adjudging the restoration of the estate on that ground, or there must be some legislative assertion of ownership of the property for breach of the condition, such as an Act directing the possession and appropriation of the property, or that it be offered for sale or settlement. At common law the sovereign could not make an entry in person, and, therefore, an office found was necessary to determine the estate; but, as said by this court in a late case, 'The mode of asserting or of resuming the forfeited grant is subject to the legislative authority of the government. It may be after judicial investigation, or by taking possession directly under the authority of the government without these preliminary proceedings.'"

The rule laid down in this case has been often reaffirmed, it last being cited in *Spokane & B. C. R. Co. vs. Washington & G. N. Co.*, 219 U. S., 163, in the opinion by Mr. Justice Day, where there was an express condition of forfeiture in the grant.

An application of this rule to the facts in the present case, without anything further, disposes of this appeal. The State or the inhabitants of the township, or the State as trustee for the inhabitants of the township, being the grantees, cannot be heard to rely upon a condition of reverter, the benefit of which is in the grantor alone, and the United States is the only proper party to raise the question, even should it be determined that there is an implied condition of reverter in these grants, which we do not think is the case.

POINT FOUR.

Nothing in the grant of the sixteenth section lands imports a limitation of the fee.

Stuart vs. City of Easton, 170 U. S., 383.

In this case Mr. Justice White said:

"While the proprietaries may have been mainly influenced in making the grant by a desire to advance the interests of the town, or were actuated by motives of charity, yet the transaction was not a mere gift, but was upon a valuable consideration, and it was the evident intention of the grantors to convey all their estate or interest in the land for the benefit of the county. The declaration in the patent of the purposes for which the land was to be held, enjoined as it was with a reference to the act of the assembly wherein the trust was created, could not have the effect of qualifying the grant of the fee simple, any more than if the declaration of the purposes for which the land was to be held had been omitted and a declaration of the trust made in an independent instrument.

"If the grant be viewed as one merely to trustees to hold 'for the uses and purposes mentioned in the act of the assembly,' it is clear that the fee was not upon a condition subsequent nor one upon limitation. There are no apt, technical words (such as so that; provided; if it shall happen; etc.,—4 Kent., Com. note b, p. 132; 2 Washb. Real Prop. p. 3) contained in the grant, nor is the declaration of the use coupled with any clause of reentry or a provision that the estate conveyed should cease or be void on any contingency. Ibid. So, also, we fail to find in the patent

the usual and apt word to create a limitation (such as—while; so long as; until; during; etc., 4 Kent. Ibid.) or words of similar import. And for the reason already stated, if we disregard the absence of technical terms or provisions importing a condition or limitation, and examine the deed with a view of eliciting the clear intention of the parties, we are driven to the conclusion that it was the intention of the grantors to convey their entire estate in the land."

The grant in this case was of certain land for a court house and prison and is not distinguishable in its terms for the grant of the sixteenth section lands in the case at bar.

The patent discussed in the Stuart case contained the following:—"To have and to hold * * * * in trust nevertheless to and *for the erecting thereon a Court House for the Public Use and Service of the said County and to and for no other Use, Intent, or Purpose whatsoever.*" Compare this grant with the grant of the sixteenth section lands at bar. The latter is to the inhabitants of the townships *"for the use of schools."* In the school grant is no "apt, technical word" making the grant of the fee upon a condition subsequent or sufficient to create a limitation. In the absence of an intention plain on the face of the grant no such condition or limitation should be read into the grant. It is purely and simply an absolute grant of the indefeasible estate in fee simple to the inhabitants of the townships, or of the legal fee simple title to the State in trust for the inhabitants of the townships.

POINT FIVE.

Adverse possession as against a trustee operates as well against the beneficiaries of the trust.

Meeks vs. Olpherts, 100 U. S., 564.

In this case Mr. Justice Miller laid down this rule of law:

> "Whatever doubt may have existed at one time on the subject, there remains none at the present day, that whenever the right of action in the trustees is barred by the Statute of Limitations, the right of *cestui que trust* thus represented is also barred."

The rule here stated is too well settled to require further citation of authorities and under this rule if the State be considered a trustee for the inhabitants of the townships, such inhabitants are also barred by the Statute of Limitations.

POINT SIX.

Adverse possession against any party in which title is so vested that such party may grant an indefeasible estate in fee simple ripens into a fee simple title by the operation of the Statute of Limitations.

Northern Pacific R. Co. vs. Ely, 197 U. S., 1
Coxe vs. Board of Trustees of University of Alabama, 161 Ala., 639.

In the Ely case Mr. Chief Justice Fuller, quoting from *Toltec Ranch Co. vs. Cook*, cited above, said:

"'Adverse possession, therefore, may be said to transfer the title as effectually as a conveyance *from the owner*; it may be considered as tantamount to a conveyance.'

"*So far as title* to portions of the right-of-way *could be lawfully acquired* from the railway company, *defendants* * * * * *had acquired title to their parcels by adverse possession, and occupied the same position as if they had received conveyances*, which the Act of April 28, 1904, operated to confirm." (*Italics Ours*)

In the University of Alabama case cited the Supreme Court of Alabama, discussing a question put by counsel in this connection, says:

"While the argument of counsel for appellee is very persuasive that the statute of limitations should not run as against the lands of the University of Alabama, because they were granted for the specific purpose, that the state could not dispose of them except for that purpose, and that the state should not be allowed to do indirectly what is forbidden from doing directly. To use his language: 'Can the state say to a squattter: I cannot sell you that land, but, if you will stay on it without my knowledge for a given number of years, it is yours?' The statute of limitations cannot indirectly change the purpose of the grant. Judge Brickell intimates the same in a dictum in the case of Trustees of the University vs. Moody, 62 Ala., 393, in which, speaking of the University, he says that it is in a large sense a public rather than a private corporation, though the legislative power may not divert from its use the donation of the lands made by Congress, or the donations of individuals, etc., citing a decision of the Supreme Court of the United States which holds

the same opinion. *Yet we are unable to escape from or avoid the conclusion that in an action of ejectment, in which the legal title only can be inquired into, prior to the Code of* 1907, 20 *years' adverse possession would defeat an action of ejectment by the state or by the University for the recovery of the University lands. But for the statute of limitations it would not: but with the statute of limitations it would.*" (*Italics Ours.*)

This being the case the State, under the Act of Congress quoted giving the State legislature authority to sell the sixteenth section lands with the consent of the inhabitants of the townships, (the beneficiaries of the trust, if legal title is in the State in trust), was in such position that *legal fee simple title could be acquired by a third party*, regardless of the question whether the Act of Congress was necessary to give the State the power to pass such title. An adverse claimant against the State and the inhabitants of the township could, then, acquire such fee simple title by virtue of his adverse possession under the rule laid down in the Ely case.

Conclusion.

The primary consideration in this case is rather a practical than a legal matter, though we do not doubt that the legal features involved are in themselves determinative of the merits of the case. For many years past parts of the sixteenth section lands in the State of Alabama have been the subject of purchase and sale where the parties have relied on the statutes of the State and the decisions

of the courts of the State with reference to adverse possession of these lands to support their title. A decision of this Court in conflict with the State decisions would result in invalidating the transfers of many thousands of acres of land in the State of Alabama and the loss to the present holders of such land of many thousands of dollars. This is a consideration which at least requires attention and should be of some weight in the determination of the case.

That there is no existing contract with respect to these lands between the United States and the State of Alabama, the obligation of which is impaired, is too manifest to require argument.

The State's entire case rests then on the premise that the grant of the lands was upon an implied condition of reverter to the United States similar to the condition of reverter said by this Court to be attached to a grant by the Government to a railroad of a right-of-way. That the United States has become divested of title to the lands, and that its sole duty and obligation with respect thereto after the grant was to identify the particular lands included in the grant and to do anything further to vest the fee simple title in the grantee, has been repeatedly decided by this court. Whether or not the State was required to secure the assent of Congress to a sale of the lands such assent having been secured the State and the inhabitants of the various townships were in a position to grant a fee simple title to third parties without further action by the United States and adverse possession against parties in such a position may ripen into a title equally good as the

title which the parties might convey:—that is, an indefeasible estate in fee simple. There is absolutely nothing in the grant which imports a limitation or condition as to the title. If the State holds as Trustee the adverse possession which forecloses it equally forecloses the beneficiaries of the trust.

Aside from all this there is no doubt that if there is any merit in the State's claim at all the United States, as the grantor, is the only party that may properly claim the benefit of any condition or limitation which may be read into the grant.

POINT SEVEN.

The decision of the Supreme Court of Alabama should be affirmed.

Attorney for Defendant in Error.

TILLMAN, BRADLEY & MORROW,
WILLIAM B. WHITE, *of Counsel.*

STATE OF ALABAMA *v.* SCHMIDT.

ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

No. 595. Argued January 12, 1914.—Decided January 26, 1914.

The act of March 2, 1819, c. 47, § 6, 3 Stat. 489, under which Alabama became a State, vested the legal title of section 16 of every township in the State absolutely although the statute declared that it was for the use of schools.

While the trust created by a compact between the States and the United States that section 16 be used for school purposes is a sacred obligation imposed on the good faith of the State, the obligation is honorary and the power of the State where legal title has been vested in it is plenary and exclusive. *Cooper* v. *Roberts*, 18 How. 173.

Statutes of limitation providing for title by adverse possession against the State after a specified period are a valid exercise of the power of the State and apply to lands conveyed to the State absolutely by the United States although for the use of schools. *Nor. Pac. Railway Co.* v. *Townsend*, 190 U. S. 267, distinguished.

A statute passed by a State disposing of lands conveyed in the enabling act by the United States to be used by the State for school lands,

held not to impair the obligation of the contract created by the acceptance of the enabling act. The State has the right to subject such lands in its hands to the ordinary incidents of title. *Cooper* v. *Roberts*, 18 How. 173.

THE facts are stated in the opinion.

Mr. Robert C. Brickell, Attorney General of the State of Alabama, with whom *Mr. R. B. Evins* was on the brief, for plaintiff in error:

Sections 16 in this State were granted by Congress to the inhabitants of the several townships for the specific use of schools. Acts of March 2, 1819, 3 Stats. 489, and March 2, 1827, 4 Stats. 237.

This grant which was in the form of a proposal to the people of the Alabama Territory, the acceptance of which was a prerequisite for the admission of the State into the Union, was accepted, as made, by the inhabitants of the State, in convention assembled, on August 2, 1819. Ordinance, Const. Conv. of 1819; 1 Code, Alabama, 1907, pp. 82–83.

Upon the acceptance of these proposals, the State was admitted into the Union. 3 Stats. 608.

By the grant of these lands for the particular use, the United States retained title for all other purposes or uses. *Nor. Pac. Ry. Co.* v. *Townsend*, 190 U. S. 267.

The State of Alabama, in accepting the proposals upon which its admission into the Union was made contingent, disclaimed all right and title to waste or unappropriated lands lying within said Territory. Clause in fourth proposal in act of Congress of March 2, 1819, 3 Stats. 489; Ordinance of 1819, *supra;* 1 Code, p. 82.

All other uses or purposes to which said Sections 16 might be put, except the use for schools, being unappropriated by the United States, came within the above disclaimer.

A state statute of limitations, whereby lands granted by

the United States to a specific use, are diverted from that use into private ownership, are in conflict with the act of Congress making the grant, and void.

The State has no power to divert sixteenth section lands from the specific use, for schools, to which they were dedicated by the act of Congress. *Nor. Pac. Ry. Co.* v. *Townsend*, 190 U. S. 267; *Vincennes University* v. *Indiana*, 14 How. 269; *Springfield* v. *Quick*, 6 Indiana, 83; *S. C.*, 22 How. 56; *Davis* v. *Indiana*, 94 U. S. 792; *Morton* v. *Granada Academies*, 16 Mississippi, 773.

The acceptance of the proposals of the act of March 2, 1819, created a contract between the United States and the State of Alabama, and the attempted diversion of these lands from the use to which granted, by a state statute of limitations, violates the obligation of this contract, and is void. *Fletcher* v. *Peck*, 6 Cranch, 87; *Fenn* v. *Kinsey*, 45 Michigan, 446, 8 N. W. Rep. 64; *Covington* v. *Kentucky*, 154 U. S. 204; *United States* v. *Great Falls*, 21 Maryland, 119; *Lowery* v. *Francis*, 2 Yerg. (Tenn.) 534.

The acts of Congress making the grant are construed most strongly against the grantee, and in favor of the United States. *United States* v. *Michigan*, 190 U. S. 379.

The acts of March 2, 1819, and March 2, 1827, are *in pari materia*, and must be construed as if passed at the same time. *Plummer* v. *Murray*, 51 Barbour (N. Y.), 201; *People* v. *Aichison*, 7 How. Pr. 241.

The grant of Sections 16 for the use of schools, is a part of the land system of the United States. 2 Kent. Com. (13th ed.) 196, note e, and see act of Congress of 1875, providing that lot No. 16 of every township shall be so reserved. And see also § 3 of the Ordinance establishing the North West Territory.

Mr. J. K. Dixon, with whom *Mr. William B. White* and *Mr. John P. Tillman* were on the brief, for defendant in error;

The grant of Sections 16 to the inhabitants of the townships for the use of schools in the State of Alabama, and the acceptance of the proposal contained in § 6 of the act for the admission of Alabama by the convention operated as a present grant and immediately divested the title of the United States to Sections 16. *Cooper* v. *Roberts*, 18 How. 173; *Hedrick* v. *Hughes*, 15 Wall. 123; *Kissel* v. *St. Louis Public Schools*, 18 How. 19; *Campbell* v. *Township Number One*, 13 How. 244; *McNee* v. *Donahue*, 142 U. S. 587; *Johanson* v. *Washington*, 190 U. S. 179; *Beecher* v. *Wetherby*, 95 U. S. 517; *United States* v. *Tully*, 140 Fed. Rep. 899.

The Alabama grant of Sections 16 being a grant of the entire title thereto, without reservation, vests in the grantee or grantees an indefeasible fee simple title and is not governed by the rules of law laid down with reference to grants of rights-of-way to railroads. Cases *supra*, and see also *Deseret Salt Co.* v. *Tarpey*, 142 U. S. 241; *Rutherford* v. *Greene*, 2 Wheat. 196; *Toltec Ranch Co.* v. *Cook*, 191 U. S. 532; *Iowa Land Co.* v. *Blumer*, 206 U. S. 482; *Missouri Valley Land Co.* v. *Wiese*, 208 U. S. 234; *Nor. Pac. R. R. Co.* v. *Ely*, 197 U. S. 1.

No one can take advantage of the non-performance of a condition subsequent annexed to an estate in fee except the grantor or its successors. The same rule applies to a grant upon condition proceeding from the government. *Schulenberg* v. *Harriman*, 21 Wall. 44; *Spokane &c. R. Co.* v. *Washington &c. R. Co.*, 219 U. S. 166; *United States* v. *Nor. Pac. R. Co.*, 152 U. S. 281.

Nothing in the Alabama grant of Sections 16 school lands imports a limitation of the fee. *Stuart* v. *Easton*, 170 U. S. 383.

Adverse possession as against a trustee operates as well against the beneficiaries of the trust. *Meeks* v. *Olpherts*, 100 U. S. 564.

Adverse possession against any party in which title is

so vested that such party may grant an indefeasible estate in fee simple ripens into a fee simple title by the operation of the Statute of Limitations. *Nor. Pac. R. Co.* v. *Ely*, 197 U. S. 1; *Coxe* v. *University of Alabama*, 161 Alabama, 639.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a suit brought by the State of Alabama to recover possession of a specified part of Section 16, Township 17, Range 5, Talladega County. It was agreed that the land was a part of the sixteenth section school lands given to the State by the act of March 2, 1819, c. 47, § 6, 3 Stat. 489, 491, and still belonged to the State if the defendant had not got a title by adverse possession, which it was agreed the defendant had if the statutes of Alabama limiting suits like the present to twenty years were valid. The trial court ruled that the statutes were valid and ordered judgment for the defendant, and this judgment was affirmed by the Supreme Court of the State.

We are of opinion that the judgment must be affirmed. The above mentioned act of Congress, under which Alabama became a State, provided that section sixteen in every township 'shall be granted to the inhabitants of such township for the use of schools.' Of course the State must admit, as it expressly agreed, that these words vested the legal title in it, since it relies upon them for recovery in the present case. Any other interpretation hardly would be reasonable. In some cases the grant has been to the State in terms, but in whichever way expressed probably it means the same thing, so far as the legal title is concerned. Certainly it has the same effect with regard to the scope of the State's legal control.

The argument for the plaintiff in error relies mainly upon *Northern Pacific Ry. Co.* v. *Townsend*, 190 U. S. 267, 271, which held that a right of way over public land

granted by the United States for railway purposes could not be extinguished by adverse possession under the statute of limitations of the State in which the land lay. The ground of that decision was that the grant to the railroad was not a conveyance of the land in fee simple absolute but a limited grant 'upon an implied condition of reverter in the event that the company ceased to use or retain the land for the purpose for which it was granted.' This decision has been met for some similar cases elsewhere by the act of June 24, 1912, c. 181, 37 Stat. 138. *Union Pacific R. R. Co.* v. *Laramie Stock Yards Co.*, 231 U. S. 190. *Union Pacific R. R. Co.* v. *Snow*, 231 U. S. 204. But it does not apply to a gift to a State for a public purpose of which that State is the sole guardian and minister. As long ago as 1856 it was decided "the trusts created by these compacts relate to a subject certainly of universal interest, but of municipal concern, over which the power of the State is plenary and exclusive," and it was held that the State of Michigan could sell its school lands without the consent of Congress. *Cooper* v. *Roberts*, 18 How. 173, 181. This decision adverted to the fact that it had been usual for Congress to authorize the sale of lands if the State should desire it, but suggested that it was unnecessary, (which, indeed, followed from what was decided), and thus met the further argument here pressed that a qualified permission to sell was given to Alabama by a much later act of March 2, 1827, c. 59, 4 Stat. 237. It also disposes of other forms of the same contention, that the state law impairs the obligation of its contract, or involves a breach of trust, supposing that such positions are open to the State to take. *American Emigrant Co.* v. *Adams County*, 100 U. S. 61. *Spokane & British Columbia Ry. Co.* v. *Washington & Great Northern Ry. Co.*, 219 U. S. 166. The gift to the State is absolute, although, no doubt, as said in *Cooper* v. *Roberts*, 18 How. 173, 182, 'there is a sacred obligation imposed on its public faith.' But that

obligation is honorary like the one discussed in *Conley* v. *Ballinger*, 216 U. S. 84, and even in honor would not be broken by a sale and substitution of a fund, as in that case; a course, we believe, that has not been uncommon among the States. See further *Stuart* v. *Easton*, 170 U. S. 383, 394.

Some reliance was placed upon *Trustees for Vincennes University* v. *Indiana*, 14 Howard, 268, but the decision of the majority in that case rested upon the grant having been made to a private corporation of which the rights could not be impaired by the State.

The result of *Cooper* v. *Roberts* and of what we have said is that the State had authority to subject this land in its hands to the ordinary incidents of other titles in the State and that the judgment must be affirmed. *Northern Pacific Ry. Co.* v. *Ely*, 197 U. S. 1, 8.

Judgment affirmed.